UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REPUBLICAN PARTY OF LOUISIANA, *et al.*,	)	
Plaintiffs,	)	Civ. No. 15-1241 (CRC-SS-TSC)
v.	)	
FEDERAL ELECTION COMMISSION,	)	MOTION FOR SUMMARY JUDGMENT
Defendant.	)	

DEFENDANT FEDERAL ELECTION COMMISSION'S
MOTION FOR SUMMARY JUDGMENT

Defendant Federal Election Commission ("Commission") respectfully moves this Court for an order (1) granting summary judgment to the Commission pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Civil Rule 7(h), and (2) denying plaintiffs' summary judgment motion (Docket No. 33). In support of this motion, the Commission is filing a Memorandum in Support of Its Motion for Summary Judgment and in Opposition to Plaintiffs' Motion for Summary Judgment, a Statement of Material Facts and accompanying Exhibits, and a Proposed Order. Pursuant to the protective order entered in this case, the Commission is separately submitting under seal unredacted versions of its Statement of Material Facts and Exhibits that plaintiffs have designated as confidential.

Respectfully submitted,

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Plaintiffs,	)	Civ. No. 15-1241 (CRC-SS-TSC)
v.	)	
FEDERAL ELECTION COMMISSION,	)	MEMORANDUM
Defendant.	)	

FEDERAL ELECTION COMMISSION'S MEMORANDUM
IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT
AND IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

Plaintiffs are state and local political parties who have launched a direct attack on one of the Supreme Court's landmark holdings in *McConnell v. FEC*, 540 U.S. 93 (2003). In particular, plaintiffs Republican Party of Louisiana ("LAGOP"), Jefferson Parish Republican Parish Executive Committee ("JPGOP"), and Orleans Parish Republican Executive Committee ("OPGOP") seek to engage in "independent" and other activity affecting federal elections without complying with the contribution limits of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-30146 ("FECA" or "Act"). Plaintiffs wish to eviscerate FECA's base individual contribution limit of $10,000 by targeting 52 U.S.C. § 30125(b), one of the key provisions Congress added to FECA in Title I of the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 ("BCRA") and that the Supreme Court specifically upheld in *McConnell*.

But *McConnell* and its progeny require the Court to reject plaintiffs' entire menu of legislative requests to reopen the "soft money" loophole Congress closed with section 30125. Permitting even one of plaintiffs' proposed partial loopholes would re-enable state and local party organizations to become conduits for corrupt exchanges between federal candidates and donors — regardless of how the money would be spent. Overwhelming evidence establishes that section 30125(b), which generally compels plaintiffs to comply with FECA's source-and-amount restrictions including the $10,000 individual contribution limit, is constitutional because it is closely drawn to serve the government's important interests in reducing actual and apparent quid pro quo corruption. Political parties have been the locus of many of the most prominent examples of quid pro quo corruption throughout our nation's history. Recent examples range from the admitted quid pro quos of former lobbyist Jack Abramoff to the indictment last year of Senator Robert Menendez in connection with alleged efforts to protect the business interests of a

supporter who, among other things, appeared to make state party contributions for the very kind of activity at issue here in exchange for those political favors. The Court should grant summary judgment to the Federal Election Commission ("Commission" or "FEC").

BACKGROUND

I. STATUTORY AND REGULATORY BACKGROUND

Under FECA, an individual cannot generally contribute more than $10,000 per year to a state or local party organization like plaintiffs for use on federal-election-related activities such as voter registration activity, get-out-the vote activity, advertisements that attack or oppose a federal candidate, or paying the staff responsible for doing such work. 52 U.S.C. §§ 30116(a)(1)(D), 30125(b).[1] A corporation or labor union cannot contribute any amount for such party committees to spend on some of these activities, and may do so only under certain conditions for other federal election activity. *Id.* §§ 30118, 30125(b). These restrictions have deep roots in the nation's experience with the financing of federal elections.

A. Early Examples of Party-Related Corruption and Efforts at Campaign Finance Regulation

Since the nation's founding, political parties have presented special concerns of corruption. Indeed, "[p]artisan politics bears the imprimatur only of tradition, not the Constitution," *Elrod v. Burns*, 427 U.S. 347, 369 n.22 (1976) (plurality), and the Constitution's Framers consciously created a framework of checks and balances to restrain the power of political parties, *see* Richard Hofstadter, *The Idea of a Party System* 3, 53 (1970); E.E. Schattschneider, *Party Government* 7 (1942) (citing *The Federalist*, No. 10 (Madison)). George

[1] Effective September 1, 2014, the provisions of FECA formerly codified in Title 2 of the United States Code were recodified in Title 52. The Office of Law Revision Counsel has published a table showing how the provisions have been reclassified. *Editorial Reclassification Table*, http://uscode.house.gov/editorialreclassification/t52/Reclassifications_Title_52.html.

Washington warned that although political parties can play a useful role, if their power is not checked they can destroy the government through corruption: "I have already intimated to you the danger of parties in the State. . . . It opens the door to foreign influence and corruption, which find a facilitated access to the government itself through the channels of party passion." G. Washington, *Farewell Address*, reprinted in *Documents of American History*, 169, 172 (H. Commager ed. 1946).

In the first half of the twentieth century, Congress became particularly concerned about corruption arising from contributions to candidate campaigns and political parties. In 1907, it passed the Tillman Act, providing "'[t]hat it shall be unlawful for any national bank, or any corporation organized by authority of any laws of Congress, to make a money contribution in connection with any election to any political office.'" *United States v. Int'l Union United Auto., Aircraft & Agr. Implement Workers of Am. (UAW-CIO)*, 352 U.S. 567, 575 (1957) (quoting 34 Stat. 864 (1907)) ("*UAW*"). That legislation declared that "'[i]t shall also be unlawful for any corporation whatever to make a money contribution in connection with any election at which Presidential and Vice-Presidential electors or a Representative in Congress is to be voted for or any election by any State legislature of a United States Senator.'" *Id.* (quoting 34 Stat. 864).

The Tillman Act "was merely the first concrete manifestation of a continuing congressional concern for elections free from the power of money." *UAW*, 352 U.S. at 575 (internal quotation marks omitted). Congress soon enacted amendments requiring disclosures of "committees operating to influence the results of congressional elections in two or more States" and "persons who spent more than $50 annually for the purpose of influencing congressional elections in more than one State." *Id.* at 575-76 (citing 36 Stat. 822). "The amendment also placed maximum limits on the amounts that congressional candidates could spend in seeking

nomination and election, and forbade them from promising employment for the purpose of obtaining support." *Id.* at 576 (citing 37 Stat. 25). In 1925, Congress passed FECA's precursor, the Federal Corrupt Practices Act of 1925, 43 Stat. 1070. One senator explained that "'[w]e all know . . . that one of the great political evils of the time is the apparent hold on political parties which business interests and certain organizations seek and sometimes obtain by reason of liberal campaign contributions,'" adding that that such "'large contributions'" lead to "'consideration by the beneficiaries . . . which not infrequently is harmful to the general public interest.'" *UAW*, 352 U.S. at 576 (quoting 65 Cong. Rec. 9507-08 (statement of Sen. Robinson)).

In 1939, Congress passed the Hatch Act, officially titled "An Act to Prevent Pernicious Political Activities." S. Rep. 101-165 at *18; *U.S. Civil Serv. Comm'n v. Nat'l Ass'n of Letter Carriers*, 413 U.S. 548, 560 (1973); 84 Cong. Rec. 9597-9600 (1939). Congress established individual contribution limits in the 1940 amendments to the Hatch Act, Pub. L. No. 76-753, 54 Stat. 767 (1940). That legislation prohibited "any person, directly or indirectly" from making "contributions in an aggregate amount in excess of $5,000, during any calendar year" to any candidate for federal office, to any committee "advocating" the election of such a candidate, or to any national political party. *Id.* § 13(a), 54 Stat. 770. The limit was sponsored by Senator John H. Bankhead, who expressed his hope that it would help "bring about clean politics and clean elections": "We all know that large contributions to political campaigns . . . put the political party under obligation to the large contributors, who demand pay in the way of legislation . . . ." 86 Cong. Rec. 2720 (1940) (statement of Sen. Bankhead); *see also* 84 Cong. Rec. 9616 (1939) (statement of Rep. Ramspeck) (stating that what "is going to destroy this Nation, if it is destroyed, is political corruption, based upon traffic in jobs and in contracts, by political parties and factions in power"). The House debates were animated in part by the

notorious "Democratic campaign book" scandal, in which federal contractors were forced to buy books at hyper-inflated prices from the Democratic party to assure that they would continue to receive government business. 84 Cong. Rec. 9598-99 (1939) (statement of Rep. Taylor).

From the start, the 1940 individual contribution limit was "ineffective." Robert E. Mutch, *Campaigns, Congress, and Courts: The Making of Federal Campaign Finance Law* 66 (Praeger 1988). Individuals circumvented the $5,000 limit by routing additional contributions through other committees supporting the same candidate, *see* Louise Overacker, *Presidential Campaign Funds* 36 (Boston University Press 1946), and the Hatch Act amendments allowed donors to make unlimited contributions to state and local parties, *see* 86 Cong. Rec. 2852-53 (1940) (amending bill to exempt state and local parties from contribution limit). Indeed, after the law was passed, the general counsel of the Republican National Committee ("RNC") asked contributors to do just that: "It is therefore our advice that donors desiring to give more than $5,000 . . . should give only one gift of $5,000 . . . . Amounts above $5,000 that a donor desires to give should be given to State or local committees." (FEC's Statement of Material Facts ¶ 12 ("SOMF").)

In the elections that followed, contributors used these techniques to make five- and six-figure contributions to both parties. *E.g.*, Overacker at 42-43 (summarizing spending in the 1944 elections); Herbert E. Alexander, *Financing Politics: Money, Elections and Political Reform* 86 (Congressional Quarterly Press 1976) (listing the number of individuals who contributed $10,000 or more in each election cycle from 1952 through 1972); *see also* David W. Adamany & George E. Agree, *Political Money: A Strategy for Campaign Financing in America* 45 (Johns Hopkins University Press 1975) (twenty-one members of a single family contributed more than $1.8 million in the 1968 elections, an average of more than $85,000 each).

B. Watergate Era Corruption and Congress's Reforms in FECA

By 1971, when Congress began debating the initial enactment of FECA, the $5,000 individual contribution limit was being "routinely circumvented." 117 Cong. Rec. 43,410 (1971) (statement of Rep. Abzug). In 1974, shortly after the Watergate scandal, Congress substantially revised FECA. These amendments established new contribution limits, including a $1,000 base limit on contributions to candidates and an aggregate limit on how much an individual could contribute to all federal candidates and political committees during a two-year election cycle. Fed. Election Campaign Act Amendments of 1974, Pub. L. No. 93-443 § 101(b)(3), 88 Stat. 1263. In *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam), the Supreme Court upheld FECA's contribution limits on the basis that they furthered the government's important interest in preventing corruption and the appearance of corruption. *Id.* at 23-38.

The *Buckley* Court itself noted the "deeply disturbing examples surfacing after the 1972 election" of "large contributions . . . given to secure a political quid pro quo from current and potential office holders." 424 U.S. at 26-27 & n.28. For example, in the 1970s, Republican party committees participated in funneling money from the dairy industry to President Richard Nixon's reelection campaign. The dairy industry had divided $2 million in support for President Nixon into contributions made to a number of committees in different states. *Buckley v. Valeo*, 519 F.2d 821, 839 n.36 (D.C. Cir. 1975) (per curiam), *aff'd in part, rev'd in part*, 424 U.S. 1 (1976) (per curiam); Final Report of the Select Committee on Presidential Campaign Activities, S. Rep. No. 93-981, 93d Cong., 2d Sess. at 615 & n.44 (1974) ("Final Report"). Republican party committees, including the RNC, were involved in funneling the contributions to the reelection campaign. Final Report at 736-42; *id.* at 738 ("[W]ithin th[e] 2-week period just before and after the [1972] election, the two [Republican] congressional committees received

$352,500 from [the dairy industry's political fund] and transferred $221,000 to RNC committees, which, in turn, forwarded $200,000 to [the Finance Committee to Re-Elect the President]."). In return for the dairy industry's contribution, President Nixon "reversed the decision . . . the Agriculture Department" had made just two weeks earlier not to increase milk price supports, "circumvent[ing]" that department's "legitimate functions." *Id.* at 1209. President Nixon's Secretary of Agriculture estimated that the decision would cost the public "'about $100 million.'" Richard Reeves, *President Nixon: Alone in the White House* 309 (Simon & Schuster 2001). The industry's contribution also led Attorney General John Mitchell — who at that time "doubled" as President Nixon's reelection campaign manager — to instruct that a grand jury investigation of the industry's associations be ended. Final Report at 1184, 1205.

In 1976, after *Buckley*, Congress amended FECA's contribution limits to establish a specific, annual limit of $5,000 on individual contributions to certain "other" political committees, including state and local party committees. Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, § 112, 90 Stat. 486-87 (now codified at 52 U.S.C. § 30116(a)(1)(D)).

C. Soft Money Era Corruption and Congress's Response in BCRA

Following the enactment of this contribution limit and others, "certain corporations, labor unions, and wealthy individuals sought to bypass these contribution limits by making so-called 'soft money' contributions to political parties." *Rufer v. FEC*, 64 F. Supp. 3d 195, 199 (D.D.C. 2014); Mem. Op. at 1 (Docket No. 24) ("Mem. Op."). The national parties used unlimited soft money donations, together with a proportion of "hard money" raised pursuant to FECA's source and amount limits, for "mixed" activities purportedly affecting both federal and state elections, including advertising that "did not expressly advocate the election or defeat of a federal

candidate" but was in fact primarily designed to affect federal elections. *Republican Nat'l Comm. v. FEC*, 698 F. Supp. 2d 150, 153 (D.D.C. 2010) ("*RNC*"), *aff'd*, 561 U.S. 1040 (2010); *see also Rufer*, 64 F. Supp. 3d at 199 (explaining that soft money contributions were "ostensibly earmarked for state and local elections or 'issue advertising' and thus not subject to the same FECA requirements as contributions explicitly intended to influence federal elections").

In 1998, after an extensive investigation, the Senate Committee on Governmental Affairs issued a report detailing the influence that soft money had come to wield in the electoral and legislative processes. *McConnell*, 540 U.S. at 129; S. Rep. No. 105-167 (1998). The six-volume, 9,500-page report concluded that the parties' ability to solicit and spend soft money had completely undercut FECA's source-and-amount limitations. *See McConnell*, 540 U.S. at 129-32. The report explained that national, state, and local committees had played a crucial role in the soft-money system: the national parties had made a practice of transferring funds to the state and local parties to conduct putatively non-federal activities "'that in fact ultimately benefit[ed] federal candidates.'" *Id*. at 131 (quoting S. Rep. 105-167 at 4466).

"Congress responded to this circumvention of FECA's contribution limits in 2002 with the enactment of BCRA, a sweeping series of amendments to FECA which, among other things, limited soft money contributions to political parties." *Rufer*, 64 F. Supp. 3d at 199 (citing *McConnell*, 540 U.S. at 122-26, 132); *McConnell*, 540 U.S. at 126, 133 (BCRA was enacted in part to plug the "soft-money loophole" that had "enabled parties and candidates to circumvent . . . limitations on the source and amount of contributions [made] in connection with federal elections"). "Rather than specifically defining and prohibiting soft money contributions, BCRA imposed a general ban on collecting funds in excess of FECA's base contribution ceilings for certain entities involved in federal elections." *Rufer*, 64 F. Supp. 3d at 199.

BCRA also adjusted FECA's base limits, including by doubling the limit for individual contributions to state and local committees from $5,000 to $10,000. *Rufer*, 64 F. Supp. 3d at 199; BCRA § 102(3). Congress increased these limits in order to compensate the political parties for some of the funds they were expected to lose as a result of the soft money ban. 148 Cong. Rec. S2153 (daily ed. Mar. 20, 2002) (statement of Sen. Feinstein) ("The soft money ban will work because we came to a reasonable compromise with regard to raising some of the existing hard money contribution limits by modest amounts . . . ."); 147 Cong. Rec. S2964 (daily ed. Mar. 27, 2001) (statement of Sen. Nickles) ("If we are going to ban soft money, we should allow some increases in hard money."). The $10,000 contribution limit for contributions to state and local committees remains the limit today. 52 U.S.C. § 30116(a)(1)(D).[2]

BCRA Title I added a new section to FECA — titled "Soft Money of Political Parties," BCRA § 101(a), now codified as 52 U.S.C. § 30125 — that distinguishes between "[n]ational committees" and "[s]tate, district and local committees." Subsection (a) establishes that national committees may no longer accept any soft money for any purpose. 52 U.S.C. § 30125(a). Subsection (b) provides that state, district, and local committees are likewise generally barred from using any soft money for "Federal election activity." *Id.* § 30125(b)(1). And subsection (c) bars national, state, district, and local committees from using soft money to pay for fundraising costs for "Federal election activity." *Id.* § 30125(c).

"Federal election activity" ("FEA") is a term Congress added in BCRA. 52 U.S.C. § 30101(20) (defining FEA); BCRA § 101(b). FEA includes four distinct categories of election

[2] The limit is shared between a state party and "affiliated" local committees, but local committees of a given political party may receive separate contributions of up to $5,000 per year from individuals if the committee's fundraising is generally separate from — and thus the committee is not "affiliated" with — the state committee of their political party. *See, e.g.*, FEC Advisory Op. 2005-02 (Corzine), at 6-7 & n.3, http://saos.fec.gov/aodocs/2005-02.pdf.

activity: (1) voter registration activity during the 120 days preceding a regularly scheduled federal election; (2) voter identification, get-out-the-vote, and generic campaign activity that is "conducted in connection with an election in which a candidate for Federal office appears on the ballot"; (3) any "public communication" that "refers to a clearly identified candidate for Federal office" and "promotes," "supports," "attacks," or "opposes" a candidate for that office (the four verbs "promotes," "supports," "attacks," or "opposes" are sometimes known by the shorthand "PASO"); and (4) the services provided by a state, district, or local committee employee who dedicates more than 25% of his or her time in a month to "activities in connection with a Federal election." 52 U.S.C. § 30101(20)(A)(i)-(iv).

BCRA also required that state and local committees report their FEA above a $5,000 annual threshold. 52 U.S.C. § 30104(e)(2); BCRA § 103(a). "In addition to any other reporting requirements applicable under this Act, a political committee . . . to which section 30125(b)(1) of this title applies[,] shall report all receipts and disbursements made for" FEA "unless the aggregate amount of such receipts and disbursements during the calendar year is less than $5,000." 52 U.S.C. § 30104(e)(2)(A). The provision also requires state and local committees to disclose "certain nonfederal amounts permitted to be spent on" FEA if they exceed that spending threshold, including "receipts and disbursements described in section 30125(b)(2)(A) and (B) of this title." *Id.* § 30104(e)(2)(B).

These "nonfederal amounts," also known as "Levin funds" after the sponsor of the relevant amendment, are an exception to the general rule that FEA by state and local party committees must be paid for entirely with funds subject to the Act's source and amount restrictions. 52 U.S.C. § 30125(b)(2); BCRA § 101(a). "[T]he Levin Amendment allows state and local party committees to pay for certain types of [FEA] with an allocated ratio of hard

money and 'Levin funds' — that is, funds raised within an annual limit of $10,000 per person." *McConnell*, 540 U.S. at 162-63 (citing 52 U.S.C. § 30125(b)(2)); 52 U.S.C. § 30125(b)(2)(B)(iii) (setting a $10,000 per "person" per year limit). The $10,000 Levin funds limit is separate from FECA's $10,000 limit on contributions from individuals to state and local committees, and it is reduced if state law establishes a lower limit. 11 C.F.R. § 300.31(d). Apart from the "$10,000 cap and certain related restrictions to prevent circumvention of that limit, § [30125](b)(2) leaves regulation of such contributions to the States"; thus, persons such as corporations and unions that cannot contribute under federal law can give Levin funds. *McConnell*, 540 U.S. at 163; *see also* 52 U.S.C. § 30125(b)(2)(C) (barring involvement of national parties and others in joint activities to raise Levin funds by "2 or more State, local, or district committees of any political party").

Levin funds may only be used to fund certain activities within the first two categories of FEA: (1) voter registration activity before a federal election, and (2) voter identification, get-out-the-vote, and certain generic campaign activity. 52 U.S.C. § 30125(b)(2)(A). Levin funds cannot be used to pay for any activities that refer to "a clearly identified candidate for Federal office," even if the candidate is not promoted, supported, attacked, or opposed. *Id.* § 30125(b)(2)(B)(i). Levin funds also "cannot be used to fund broadcast communications unless they refer 'solely to a clearly identified candidate for State or local office.'" *McConnell*, 540 U.S. at 163 (quoting 52 U.S.C. § 30125(b)(2)(B)(ii)). Finally, "both the Levin funds and the allocated portion of hard money used to pay for such activities must be raised entirely by the state or local committee that spends them." *Id.*; 52 U.S.C. § 30125(b)(2)(B)(iv); *McConnell v. FEC*, 251 F. Supp. 2d 176, 210 (D.D.C. 2003) (per curiam) (describing this "homegrown" rule).[3]

[3] The FEC's guidebook *Political Party Committees* (Aug. 2013), http://www.fec.gov/pdf/partygui.pdf, provides a summary of how Levin funds may be raised, spent, and allocated. *Id.* at 57-58 (raising and spending); *id.* at 116-17 (allocation).

D. Other Regulation of Political Party Committees

Despite these restrictions, political parties — unlike all other entities — have long been permitted under FECA to coordinate spending with candidates well above the Act's contribution limits. 52 U.S.C. § 30116(d)(2)-(3). The Act currently allows national and state party committees each to coordinate spending with a candidate up to $46,800 or $96,100 in races for the House of Representatives (depending on whether the state has only one or multiple districts), and up to a range of $96,100 to $2,886,500 in races for the Senate (depending on the state's voting age population). *Id.*; FEC, *Price Index Adjustments for Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, 81 Fed. Reg. 7101-03 (Feb. 10, 2016).

Since 1979, Congress has permitted state and local party committees to spend unlimited amounts for certain activities — called exempt party activities — that benefit federal candidates, including slate cards, sample ballots, campaign materials distributed by volunteers, and voter drives for presidential nominees. Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, § 101, 93 Stat. 1340-44. Congress defined these activities to be exemptions from the definitions of "contribution" and "expenditure," thereby permitting coordination between state and local committees and federal candidates on them. 52 U.S.C. § 30101(8)(B)(v), (9)(B)(iv) (slate card/sample ballot); *id.* § 30101(8)(B)(ix), (9)(B)(viii) (campaign materials); *id.* § 30101(8)(B)(xi), (9)(B)(ix) (voter drives); 11 C.F.R. §§ 100.80, 100.87, 100.89, 100.140, 100.147, 100.149; 11 C.F.R. § 109.37(b) (referencing exemptions in 11 C.F.R. part 100).

There are no limits on the amounts that political parties can spend to make independent expenditures. *Colo. Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 617 (1996) ("*Colorado I*"). An "[i]ndependent expenditure" is defined under the Act as an expenditure "(A) expressly advocating the election or defeat of a clearly identified candidate; and (B) that is not

made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents." 52 U.S.C. § 30101(17).

II. COURT CHALLENGES AFTER BCRA

A. *McConnell v. FEC* (2003)

Republican party national, state, and local committees, among many others, challenged BCRA as soon as it was passed in 2002. *McConnell*, 251 F. Supp. 2d at 220 n.55 (listing dozens of parties in the case). Among other things, the plaintiffs facially challenged new FECA § 323 (section 30125) under the First Amendment. *McConnell*, 540 U.S. at 134.

In upholding most of BCRA, the Supreme Court considered and rejected the plaintiffs' arguments that section 30125(b) was unconstitutional. The Court upheld the requirement that state and local committees fund FEA with hard money subject to FECA's $10,000 contribution limit (or in some circumstances with an allocated mix of hard money and Levin funds), the definition of FEA, and the requirements governing use of Levin funds. *McConnell*, 540 U.S. at 161-73. "Congress recognized that, given the close ties between federal candidates and state party committees, BCRA's restrictions on national committee activity would rapidly become ineffective if state and local committees remained available as a conduit for soft-money donations." *Id.* at 161. Section 30125(b), the Court wrote, "is designed to foreclose wholesale evasion of § [30125](a)'s anticorruption measures by sharply curbing state committees' ability to use large soft-money contributions to influence federal elections." *Id.*

Applying the "closely drawn" standard of review that applies to FECA's contribution limits, 540 U.S. at 136, the Court held that "[p]reventing corrupting activity from shifting wholesale to state committees and thereby eviscerating FECA clearly qualifies as an important

governmental interest," *id.* at 165-66. Separately discussing each of the four categories of FEA, *id.* at 167-71, the Court found that they "all are reasonably tailored, with various temporal and substantive limitations designed to focus the regulations on the important anticorruption interests to be served," *id.* at 167. Accordingly, the Court held that section 30125(b) "is a closely drawn means of countering both corruption and the appearance of corruption." *Id.* at 167, 173.

B. *RNC v. FEC* (2010)

In 2008, Republican party national, state, and local committees brought another challenge in this Court. Again they "target[ed]," among other things, "§ [30125](b), which prohibits them from using soft-money contributions for any '[FEA].'" *RNC*, 698 F. Supp. 2d at 160. The state and local party committees contended that section 30125(b) was unconstitutional "as applied" to certain proposed FEA that they planned. *Id.* "Specifically, they assert[ed] that the First Amendment entitles them to receive and spend soft-money contributions (that is, contributions above the current $10,000 annual limit) on . . . public communications that," among other things, would "incidentally criticize or oppose federal candidates." *Id.* They also sought to be entitled to receive and spend soft money on "voter registration, voter identification, get-out-the-vote activities, and 'generic campaign activity' in connection with elections where both state and federal candidates appear on the ballot, but not 'targeted to' any federal race or candidate." *Id.*

The district court first rejected plaintiffs' argument that Congress could not regulate certain activities that were insufficiently federal, which the court found to be "not so much an as-applied challenge as . . . an argument for overruling a precedent," which a district court could not do. 698 F. Supp. 2d at 157. The court next addressed plaintiffs' contention that the Supreme Court's then-recent decision in *Citizens United v. FEC*, 558 U.S. 310 (2010), striking down financing restrictions on corporate independent expenditures, had undermined *McConnell*'s

holding concerning the governmental interests in restricting soft money contributions to political parties. *RNC*, 698 F. Supp. 2d at 158-60. The district court found, however, that *McConnell* had permissibly justified the soft money ban, even when viewed under the definition of corruption set out in *Citizens United*. "'[T]he close relationship between federal officeholders and . . . parties'" means that contributions to party committees "have much the same tendency as contributions to federal candidates to result in *quid pro quo* corruption or at least the appearance of *quid pro quo* corruption." *Id.* at 159 (quoting *McConnell*, 540 U.S. at 154).

Addressing the state and local committees' as-applied challenges to section 30125(b), the district court began by observing that the Supreme Court in *McConnell* had "squarely rejected those claims," 698 F. Supp. 2d at 161, under the applicable "closely drawn" level of scrutiny, *id.* at 156. It explained that the Supreme Court had expressly considered and rejected "the argument that § [30125](b) was overbroad because it applied to expenditures by state and local parties that allegedly 'pose no conceivable risk of corrupting or appearing to corrupt federal officeholders.'" *Id.* at 161 (quoting *McConnell*, 540 U.S. at 166). In *McConnell*, the Supreme Court had "examined each of the categories of activity that § [30125](b) requires state and local parties to pay for with hard money, and it found that expenditures in each category had a significant potential to 'directly assist' federal candidates." *Id.* The court acknowledged that parties are permitted to bring as-applied challenges to section 30125(b) despite *McConnell's* facial holding, but it found that the arguments the plaintiffs raised were "essentially the same arguments considered and rejected in *McConnell*." *Id.* Accordingly, the district court "reject[ed] plaintiffs' as-applied challenges to § [30125](b) as a matter of law." *Id.* at 162.

Exercising its mandatory jurisdiction, the Supreme Court affirmed without opinion. 561 U.S. 1040 (2010).

C. *RNC v. FEC* and *Rufer v. FEC* (2014)

In 2014, LAGOP and the other plaintiffs in the current case, along with others including the RNC and Chris Rufer (an individual who wished to make contributions to Libertarian groups), brought another round of challenges in this Court against section 30125 and other provisions of FECA. *Rufer*, 64 F. Supp. 3d at 200 n.2. The plaintiffs sought "to invalidate Congress's longstanding party contribution limits as applied to *their* non-coordinated expenditures," seeking permission to create "segregated" accounts into which they could receive unlimited contributions for "non-coordinated federal campaign expenditures." *Id.* at 198, 200. After the Court certified plaintiffs' challenge for merits determination by the D.C. Circuit pursuant to 52 U.S.C. § 30110, rather than a three-judge court like this one, all plaintiffs voluntarily dismissed. "Having been deprived of a direct ticket to the Supreme Court, . . . plaintiffs abandoned their" case and regrouped for this challenge. (Mem. Op. at 3.)

III. PLAINTIFFS' CLAIMS

In this case, plaintiffs seek declaratory and injunctive relief against three provisions of FECA: (1) the requirement that state and local parties must generally fund FEA with money raised subject to FECA's source and amount restrictions, 52 U.S.C. § 30125(b)(1); (2) the requirement that funds used to raise money for FEA themselves be raised in accord with FECA's source and amount restrictions, *id.* § 30125(c); and (3) the requirement that state and local committees report their FEA, *id.* § 30104(e)(2). (Verified Compl. for Declaratory and Injunctive Relief (Docket No. 1) ("Compl.") Prayer for Relief ¶¶ 3-10.)

Plaintiffs' causes of action seek varying amounts of relief, but all contain certain qualifications. Count I asks that the three challenged provisions be invalidated as applied to "independent, non-individualized communications that exhort registering/voting" and to such

communications made "by Internet." (Compl. ¶¶ 117-29 (emphases removed).) Count III asks that the provisions be invalidated as applied to all "independent" FEA. (*Id.* ¶¶ 139-49 (emphasis removed).) Count IV asks that they be invalidated facially. (*Id.* ¶¶ 150-52.) Counts I, III, and IV are brought on behalf of all plaintiffs. Count II is brought on behalf of LAGOP only. It challenges the three provisions as applied to certain proposed FEA by LAGOP. (*Id.* ¶ 131.) It alternatively challenges only sections 30125(b)(1) and 30125(c) as applied to the proposed creation of an "independent-communications-only account," which allegedly would "contain only contributions from individuals" to LAGOP "that are legal under state law and applicable federal law (other than the challenged provisions)." (*Id.* ¶ 132 (emphasis removed).) This account would allegedly be similar to "the non-contribution accounts . . . of nonconnected committees," which such committees have used to finance independent expenditures following *Citizens United* and other decisions. (*Id.* ¶ 137.) Count II's alternative request does not challenge section 30104(e)(2)'s reporting requirement. All four counts are based on plaintiffs' claim that their planned activities raise no "cognizable" quid-pro-quo corruption risk. (*Id.* ¶¶ 121, 123, 134-35, 145, 151.)

Plaintiffs' claims focus on individual donors as the only source of funds at issue. Plaintiffs have stated that this case is about "the right of state and local committees to make independent communications . . . with . . . contributions, *from individuals*, that they have and routinely raise." (Pls.' Reply Mem. Supporting Mot. to Expedite at 1 (Docket No. 18) (emphasis added); *see* Compl. ¶ 137 (explaining that plaintiffs' proposed account would "only solicit contributions from individuals," not corporations or unions).) Plaintiffs have repeatedly indicated that they will comply with a long list of other FECA contribution prohibitions. (Compl. ¶ 107; Pls.' Mot. for Summ. J. at 13 (Docket No. 33) ("Pls.' Mem."); Pls.' Statement of

Material Facts Not in Genuine Dispute at 29 ¶ 66 (Docket No. 33).)[4] Plaintiffs have also said that all funds they raise will be "compliant with state law," including Louisiana's $100,000 four-year limit on individual contributions. (Compl. ¶ 108; *see also id.* ¶ 109 (describing limit).) Plaintiffs seek only to "be able to use nonfederal funds to pay for an *allocated* amount of their activities under the existing allocation rules" applicable to state and local party activity that is not FEA. (*Id.* ¶ 137.)[5]

Plaintiffs acknowledge that use of Levin funds would permit them to pay for an allocated portion of their desired activities with nonfederal funds. But they assert that they "do not use [Levin funds] due to complexity, burdens, and restrictions." (Compl. ¶ 15 n.4.) In describing their proposed activities (*id.* ¶¶ 74-111), plaintiffs appear ultimately to concede that these activities mostly meet the definition of FEA, despite some equivocation (*e.g.*, *id.* ¶ 104 (asserting that advertisement mentioning Hillary Clinton delivered through certain mediums may not meet the criteria for "federal election activity")). Finally, although plaintiffs allege that they intend to comply with just about every other applicable federal and state contribution restriction (*id.*

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[4] Although plaintiffs' discovery responses and deposition answers mention that they would like to use corporate contributions on FEA (*e.g.*, SOMF ¶ 42), the court filings cited above disclaim that request, and plaintiffs' complaint and summary judgment motion leave out such contributions.

[5] Notwithstanding these representations, in addition to plaintiffs' inconsistent statements about whether they seek to fund their proposed FEA using corporate contributions, plaintiffs have also indicated that they believe no contribution restrictions (including Louisiana's) should restrict their actions, and that they do not wish to use only a portion of nonfederal funds on FEA but to fund such activities wholly with nonfederal funds. (SOMF ¶ 42.) In addition to such inconsistencies, plaintiffs' complaint and summary judgment filings contain numerous other erroneous factual and legal assertions that are addressed in the Commission's Answer (Docket No. 19) and Statement of Genuine Issues accompanying this brief.

¶¶ 107-09; Pls.' Mem. at 13), absent from the list is FECA's annual $10,000 limit for individual contributions to state and local committees, 52 U.S.C. § 30116(a)(1)(D).[6]

ARGUMENT

The Court should reject plaintiffs' constitutional challenges to sections 30125(b) and (c) and 30104(e)(2) of FECA. These provisions all easily survive review under the applicable standards of intermediate scrutiny, and the simple answer to plaintiffs' challenge is that *McConnell* and its progeny fully dispose of their claims. Plaintiffs' recycled arguments that the government has no cognizable interest in regulating their proposed use of soft money for FEA because it poses no risk or appearance of quid-pro-quo corruption have already been rejected. But even if they had not been, the claims depend upon the Court ignoring the significant evidence to the contrary in the record in this case. There is no question that plaintiffs' request to return to the regulatory framework of the soft money era would invite a return of that era's well-documented abuses. The Court should decline their request and enter judgment for the FEC.

I. STANDARD OF REVIEW

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Diamond v. Atwood*, 43 F.3d 1538, 1540 (D.C. Cir. 1995). "[I]n ruling on cross-motions for summary judgment, the court shall grant summary judgment only if one of the moving parties is entitled to judgment as a matter of law upon material facts that are not genuinely disputed." *Shays v. FEC*, 337 F. Supp. 2d 28, 51 (D.D.C. 2004), *aff'd*, 414 F.3d 76 (D.C. Cir. 2005).

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[6] The Commission has separately moved the Court to dismiss plaintiffs' case for lack of standing. (*See* FEC's Mot. to Dissolve Three-Judge Ct. With Instrs. to Dismiss, Or, Alternatively, To Dismiss Action (Docket No. 40) ("Mot. to Dissolve").) In this motion, the FEC explains why the Court should rule in its favor if it first concludes that it has jurisdiction.

II. THE COURT EVALUATES PLAINTIFFS' CHALLENGES TO BCRA'S SOFT MONEY PROVISIONS USING INTERMEDIATE SCRUTINY

1. Contribution Limit Standard of Scrutiny

Plaintiffs' challenges to subsections 30125(b) and (c) are reviewed using a form of intermediate scrutiny referred to as "closely drawn" scrutiny. *McConnell*, 540 U.S. at 134-42; *RNC*, 698 F. Supp. 2d at 156. Under that standard, these subsections are constitutional so long as the government "demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgement of associational freedoms." *Buckley*, 424 U.S. at 25; *McCutcheon v. FEC*, 134 S. Ct. 1434, 1444 (2014); *McConnell*, 540 U.S. at 136 ("a contribution limit involving even significant interference with associational rights is nevertheless valid if it satisfies the lesser demand of being closely drawn to match a sufficiently important interest" (internal quotation marks omitted)).

Since *Buckley*, laws that restrict contributions have been reviewed under the "closely drawn" standard, which is more deferential than strict scrutiny. 424 U.S. at 23. The *Buckley* Court explained that "[b]y contrast with a limitation upon expenditures for political expression, a limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage in free communication." *Id.* at 20. That is because "the transformation of contributions into political debate involves speech by someone other than the contributor." *Id.* at 21. While the contribution itself "serves as a general expression of support" for the recipient, it "does not communicate the underlying basis for the support," and the "quantity of communication by the contributor does not increase perceptibly with the size of his contribution, since the expression rests solely on the undifferentiated, symbolic act of contributing." *Id.* Furthermore, although contribution limits "impinge on protected associational freedoms" by "limit[ing] one important

means of associating with a . . . committee," they do not preclude other means of association, and they "leave the contributor free to become a member of any political association and to assist personally in the association's efforts on behalf of candidates." *Id.* at 22.

In *McConnell*, the Supreme Court thoroughly considered whether section 30125 should be analyzed using closely drawn scrutiny or, as the plaintiffs had urged, strict scrutiny. *McConnell*, 540 U.S. at 134-42. The Court explained that its treatment of "contribution restrictions reflects more than the limited burdens they impose on First Amendment freedoms. It also reflects the importance of the interests that underlie contribution limits — interests in preventing" both the risk and appearance of quid pro quo corruption. *Id.* at 136. "[T]hese interests directly implicate the integrity of our electoral process, and, not less, the responsibility of the individual citizen for the successful functioning of that process." *Id.* at 136-37 (internal quotation marks omitted). In recognition of such interests, "there is no place for a strong presumption against constitutionality, of the sort often thought to accompany the words strict scrutiny." *Id.* at 137 (internal quotation marks omitted). Accordingly, the "less rigorous standard of review" of closely drawn scrutiny shows proper deference to Congress and provides it "with sufficient room to anticipate and respond to concerns about circumvention of regulations designed to protect the integrity of the political process." *Id.* "[C]ontribution limits impose serious burdens on free speech only if they are so low as to 'preven[t] candidates and political committees from amassing the resources necessary for effective advocacy.'" *Id.* at 135 (quoting *Buckley*, 424 U.S. at 21).

Turning to the specific challenges to BCRA's soft money restrictions, the Court explained that section 30125's provisions "have only a marginal impact on the ability of contributors . . . and parties to engage in effective political speech." *Id.* at 138. "Complex as its

provisions may be, § [30125], in the main, does little more than regulate the ability of wealthy individuals, corporations, and unions to contribute large sums of money to influence federal elections." *Id.* Rejecting the plaintiffs' request to apply strict scrutiny, the Court determined that "it is irrelevant that Congress chose in § [30125] to regulate contributions on the demand rather than the supply side." *Id.* Rather, "[t]he relevant inquiry is whether the mechanism adopted to implement the contribution limit, or to prevent circumvention of that limit, burdens speech in a way that a direct restriction on the contribution itself would not. That is not the case here." *Id.* at 138-39. Thus, although "§ [30125(b)] prohibits state party committees from spending nonfederal money on federal election activities," it does not "limit[] the total amount of money parties can spend." *Id.* at 139. "That [it] do[es] so by prohibiting the spending of soft money does not render [it an] expenditure limitation[]." *Id.*

Plaintiffs nevertheless contend that "*McConnell*'s scrutiny analysis neither applies nor controls" (Pls.' Mem. at 15-16) and that "*Citizens United*'s [s]trict [s]crutiny [c]ontrols the [i]ndependent-[c]ommunication [c]ontext" (*id.* at 17-18). That is wrong; this case is about how much money plaintiffs can raise from individuals. Plaintiffs attempt to obscure this fact by invoking language from cases discussing expenditure limits, but these cases are inapposite, and courts routinely reject this proposed trick of squinting at a base contribution limit until it resembles an expenditure restriction that can be reviewed under strict scrutiny. In *RNC*, for example, the court considered those plaintiffs' contention "that § [30125's] contribution limits will function as expenditure limits when applied to their proposed conduct." 698 F. Supp. 2d at 156. "But that argument," the court explained, "flies in the face of *McConnell*, which squarely held that the level of scrutiny for regulations of contributions to candidates and parties *does not turn on how the candidate or party chooses to spend the money or to structure its finances*.

Moreover, *Citizens United* expressly left intact this portion of *McConnell*." *Id.* (emphasis added). That analysis applies with full force here.

In any event, the fact that plaintiffs may "legally *have* nonfederal funds in state accounts" that were raised in accord with FECA's contribution restrictions does not transform those restrictions into an "*independent expenditure* restriction." (Pls.' Mem. at 15.) Nor does plaintiffs' notion that *McConnell* "equat[ed]" issue ads and express advocacy support the logical leap they draw from that (supposed) equation — *i.e.*, that plaintiffs' "non-individualized, independent communications are constitutionally like independent expenditures" in the context of this case (*Id.* at 15-16.) Rather, what *McConnell* held, in its lengthy discussion of the standard of scrutiny, was that Congress's choice to structure section 30125 to "prohibit[] the spending of soft money does not render [it an] expenditure limitation[]." 540 U.S. at 139.

Plaintiffs' reliance on *McCutcheon* is equally misplaced. Plaintiffs rely on the Court's reference to the *aggregate* limits at issue in that case as restricting "speech." (Pls.' Mem. at 15, 17-18 (internal quotation marks omitted).) But forty years ago in *Buckley*, the Court explained that "a limitation upon the amount that any one person or group may contribute to a . . . political committee entails only a marginal restriction upon the contributor's ability to engage in free communication," explaining that this is because, in part, "the transformation of contributions into political debate involves speech by someone other than the contributor." 424 U.S. at 20-21. Even more to the point, *McConnell* itself determined that section 30125 has "only a marginal impact on the ability of contributors . . . and parties to engage in effective political *speech*." 540 U.S. at 138 (emphasis added). That is why the Court has long used the lesser standard of closely drawn scrutiny to evaluate base limits on contributions to parties and candidates.

That lesser standard was the same standard the plurality applied to the aggregate limits at issue in *McCutcheon*. (*Contra* Pls.' Mem. at 37 n.39 (suggesting that *McCutcheon*'s version of the standard was "strong").) Directly addressing the issue, the Court explained that despite "the [parties' and amici's] robust debate, we see no need in this case to revisit *Buckley*'s distinction between contributions and expenditures *and the corollary distinction in the applicable standards of review*." 134 S. Ct. at 1445 (emphasis added). The Court thus considered the aggregate limits using closely drawn scrutiny. *Id.* at 1446, 1456 (explaining that "the aggregate limits violate the First Amendment because they are not closely drawn to avoid unnecessary abridgment of associational freedoms" (internal quotation marks omitted)); *see also id.* at 1444 ("[e]ven a significant interference with protected rights of political association may be sustained if the [government] demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms" (internal quotation marks omitted)). Indeed, as the Court later pointed out in another case, "[a]pplying any standard of review other than intermediate scrutiny in *McCutcheon* — the standard that was assumed to apply — would have required overruling a precedent," — *i.e.*, *Buckley*. *McCullen v. Coakley*, 134 S. Ct. 2518, 2530 (2014). But instead, the *McCutcheon* plurality reaffirmed that its "holding about the constitutionality of the aggregate limits clearly does not overrule *McConnell*'s holding about 'soft money,'" including the applicable standard of scrutiny. 134 S. Ct. at 1451 n.6.

2. Disclosure Requirement Standard of Scrutiny

Because section 30104(e)(2) contains a reporting requirement, not a contribution limit, it is reviewed using a different form of intermediate scrutiny. This is because "[d]isclaimer and disclosure requirements," like those contained in section 30104(e)(2), "may burden the ability to speak, but they impose no ceiling on campaign-related activities, and do not prevent anyone from

speaking." *Citizens United*, 558 U.S. at 366 (citations and internal quotation marks omitted). Thus, "[t]he Court has subjected these requirements to 'exacting scrutiny,' which requires a 'substantial relation' between the disclosure requirement and a 'sufficiently important' governmental interest." *Id.* at 366-67 (quoting *Buckley*, 424 U.S. at 64, 66).

III. SECTION 30125(B) IS CONSTITUTIONAL BECAUSE IT IS CLOSELY DRAWN TO MATCH THE GOVERNMENT'S IMPORTANT INTERESTS IN LIMITING QUID PRO QUO CORRUPTION AND ITS APPEARANCE

Plaintiffs' challenge to section 30125(b) must fail because it has been resolved by *McConnell* and *RNC*. Furthermore, section 30125(b) easily passes constitutional review because it is closely drawn to the governmental interest in preventing quid pro quo corruption and its appearance. Overwhelming evidence supports FECA's soft money restrictions. The evidence also confirms that plaintiffs are not being hindered by having to comply with them.

A. Plaintiffs' Claims Fail As a Matter of Law

1. This Court Is Required to Follow *McConnell* and *RNC*

Plaintiffs' challenges to section 30125 are controlled by *McConnell* and *RNC*. In *McConnell*, the plaintiffs challenged section 30125 facially and argued that the soft money ban failed to serve the government interest in deterring actual and apparent corruption because the funds at issue were ostensibly given for nonfederal purposes and in some cases spent on purely state and local elections. *McConnell*, 540 U.S. at 145, 154. The Supreme Court disagreed. It found that "large soft-money contributions to national parties are likely to create actual or apparent indebtedness on the part of federal officeholders, regardless of how those funds are ultimately used." *Id.* at 155. The Court likewise rejected the state and local committees' argument that section 30125(b), the provision primarily challenged here, represented "a new brand of pervasive federal regulation of state-focused electioneering activities that cannot

possibly corrupt or appear to corrupt federal officeholders." *Id.* at 166. The Court found that section 30125(b) was "premised on Congress' judgment that if a large donation is capable of putting a federal candidate in the debt of the contributor, it poses a threat of corruption or the appearance of corruption." *Id.* at 167.

In upholding section 30125(b)(1), the Court found that the provision, like the other "remaining provisions of new FECA § 323 [section 30125]," "largely reinforce[s]" the restrictions of section 30125(a), *id.* at 133; it "foreclose[s] wholesale evasion of § [30125](a)'s anticorruption measures by sharply curbing state committees' ability to use large soft-money contributions to influence federal elections," *id.* at 161. Having been taught the "hard lesson of circumvention," Congress had reasonably concluded that "political parties would react to § [30125](a) by directing soft-money contributors to the state committees, and that federal candidates would be just as indebted to these contributors as they had been to those who had formerly contributed to the national parties." *Id.* at 165. The Court held that "[p]reventing corrupting activity from shifting wholesale to state committees and thereby eviscerating FECA clearly qualifies as an important governmental interest." *Id.* at 165-66. The Court upheld the restrictions on all four categories FEA as "reasonably tailored, with various temporal and substantive limitations designed to focus the regulations on the important anticorruption interests to be served." *Id.* at 167. Section 30125(b) thus "is a closely drawn means of countering both corruption and the appearance of corruption." *Id.* at 167, 173.

Moreover, seven years after *McConnell*, a three-judge court in this District rejected another as applied challenge to section 30125(b). *RNC*, 698 F. Supp. 2d 150. That court found that "'the close relationship between federal officeholders and . . . parties'" means that soft money contributions to party committees "have much the same tendency as contributions to

federal candidates to result in *quid pro quo* corruption or at least the appearance of *quid pro quo* corruption." *Id.* at 158-59 (quoting *McConnell*, 540 U.S. at 144). The court thus "reject[ed] plaintiffs' as-applied challenges to § [30125](b) as a matter of law." *Id.* at 162. The Supreme Court affirmed without opinion, thereby expressing agreement with the district court's judgment. 561 U.S. 1040 (2010). The Court's summary affirmance is an act with precedential value with respect to "'the precise issues presented and necessarily decided by those actions.'" *Anderson v. Celebrezze*, 460 U.S. 780, 784 n.5 (1983). That section 30125(b) furthers the governmental interest in preventing actual and apparent quid pro quo corruption is such an issue.

This Court must similarly reject plaintiffs' challenges. As explained in the single-judge opinion referring this case for disposition by this Court, "*McConnell* and [*RNC*] appear to control any district court's resolution of this case." (Mem. Op. at 15-16.) That is because *McConnell* "upheld the portions of BCRA that cabined contributions to political parties in connection with federal elections, 'regardless of how th[e] funds are ultimately used.'" *Rufer*, 64 F. Supp. 3d at 202-03 (quoting *McConnell*, 540 U.S. at 155). "This portion of *McConnell*" — "upholding [52 U.S.C. § 30125](a) & (b)" — "was *untouched* by the Court's later ruling in *Citizens United*, which overturned the ban on unlimited expenditures by private and public corporate entities." *Rufer*, 64 F. Supp. 3d at 203 (emphasis added). It was also left untouched by *McCutcheon*, which did not silently overrule *McConnell* but instead proclaimed that "[o]ur holding about the constitutionality of the aggregate limits clearly does not overrule *McConnell*'s holding about 'soft money.'" 134 S. Ct. at 1451 n.6. The Supreme Court has directed lower courts to follow its precedents having "direct application in a case," even if such a precedent "appears to rest on reasons rejected in some other line of decisions," and leave to the Supreme Court "the prerogative of overruling its own decisions." *Rodriguez de Quijas v. Shearson/Am. Express,*

Inc., 490 U.S. 477, 484 (1989). So this Court must follow *McConnell* and *RNC*. Consequently, irrespective of plaintiffs' plans to do FEA independently, or by internet, or through an invention such as an "independent-communications-only-account" or "ICA" (Pls.' Mem. at 13), their core request to remove the soft money limits is foreclosed "regardless of how those funds are ultimately used." *McConnell*, 540 U.S. at 155.

2. Plaintiffs Cannot Distinguish *McConnell* and *RNC*

Plaintiffs attempt to escape this binding precedent with selective reliance and rejection of portions of previous court opinions and dissents, reflecting those cases with the accuracy of a funhouse mirror. (Pls.' Mem. at 18-36.) Through this "bit of interpretive jiggery pokery," *cf. King v. Burwell*, 135 S. Ct. 2480, 2500 (2015) (Scalia, J., dissenting), plaintiffs end up warning the Court against the "mistake" of "reliance on some prior *language*" from controlling decisions like *McConnell* (Pls.' Mem. at 22-23) and contending that "[w]hat . . . *McConnell* [r]eally [s]aid [s]upports [p]laintiffs" (*id.* at 33-36). Beneath all this lies the faulty syllogism at the root of plaintiffs' claims: "(i) only narrow quid-pro-quo corruption is cognizable; (ii) independence eliminates it; and (iii) political parties' independent communications are equally non-corrupting" as those by non-connected independent expenditure-only committees ("super PACs"). (*Id.* at 36.) Or as the single-judge Court put it: "What's sauce for the [super] PAC geese, they submit, should be sauce for the party ganders." (Mem. Op. at 9.)

Plaintiffs are wrong. Even though political parties can make independent expenditures, *Colorado I*, 518 U.S. at 618, this case, like *McConnell*, is about soft money, not the right to make independent expenditures.[7] *Citizens United*, conversely, was "about independent expenditures,

[7] Although *Colorado I* established that political parties were capable of making independent expenditures, the Court's opinion never suggested that contributions used to fund those expenditures should be unlimited. To the contrary, the Court pointed out that "[t]he

not soft money." 558 U.S. at 361. In contrast to independent expenditures made by non-party entities, Congress's regulation of FEA is targeted particularly to "[s]tate, district, or local committee[s] of a political party" like plaintiffs. 52 U.S.C. § 30125(b)(1). Based on an overwhelming record of abuse by such committees, Congress specifically cabined their use of soft money for FEA by regulating "contributions, not activities," *McConnell*, 540 U.S. at 154, and did so in a "reasonably tailored" manner, *id.* at 167, designed to curb the risk and appearance of quid-pro-quo corruption. Despite plaintiffs' assurances that certain planned communications will not be coordinated (Pls.' Mem. at 29-33; *see also* Compl. ¶¶ 78-83), section 30125 is premised on the tight "nexus between national parties and federal officeholders" that "prompted one of [BCRA] Title I's framers to conclude" that the parties "'are *inextricably intertwined* with federal officeholders and candidates,'" *McConnell*, 540 U.S. at 155 (emphasis added) (quoting 148 Cong. Rec. H409 (Feb. 13, 2002) (statement of Rep. Shays)); *accord* SOMF ¶¶ 45, 50-53, 55, 59-85, 92, 94. Political party committees do not need to coordinate specific activities in order to return to a system in which vast sums of soft money raised and spent by "'state and local political parties for "generic voter activities" that in fact ultimately benefit[] federal candidates,'" *McConnell*, 540 U.S. at 131, present the same actual and apparent abuses as before BCRA.

That is because parties are not like regular political committees. Nonconnected committees "do not select slates of candidates for elections," "determine who will serve on legislative committees, elect congressional leadership, or organize legislative caucuses," but these activities count among the parties' core responsibilities. *McConnell*, 540 U.S. at 188

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greatest danger of corruption" as a result of its holding "appears to be from the ability of donors to give sums up to $20,000 to a party which may be used for independent party expenditures for the benefit of a particular candidate." *Colorado I*, 518 U.S. at 617. The Court even went so far as to say that if Congress feared that this danger was too great, it "might decide to change the statute's limitations on contributions to political parties" by making them even lower. *Id.*

("[P]olitical parties have influence and power in the Legislature that vastly exceeds that of any interest group."); *id.* ("[P]arty affiliation is the primary way . . . voters identify candidates," and therefore parties "have special access to and relationships with" those who hold public office.) "A primary goal of all the major political parties is to win elections." *Cao v. FEC*, 688 F. Supp. 2d 498, 527 (E.D. La.), *aff'd sub nom. In re Cao*, 619 F.3d 410 (5th Cir. 2010).[8] This overriding purpose makes political parties particularly susceptible to contributors who want to create a quid pro quo relationship with an officeholder. As the Supreme Court has explained,

> Parties are . . . necessarily the instruments of some [donors] whose object is not to support the party's message or to elect party candidates across the board, but . . . to support a specific candidate for the sake of a position on one . . . issue, or even to support any candidate who will be obliged . . . .

FEC v. Colo. Republican Fed. Campaign Comm. v. FEC, 533 U.S. 431, 451-52 (2001) ("*Colorado II*") ("In reality, parties . . . function for the benefit of donors whose object is to place candidates under obligation, a fact that parties cannot escape. Indeed, parties' capacity to concentrate power to elect is the very capacity that apparently opens them to exploitation as channels for circumventing contribution and coordinated spending limits binding on other political players."); *id.* at 452 ("[W]hether they like it or not, [parties] act as agents for spending on behalf of those who seek to produce obligated officeholders.").

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[8] *See also Cao*, 688 F. Supp. 2d at 527 ("The ultimate goal of a political party is to get as many party members as possible into elective office, and in doing so to increase voting and party activity by average party members." (quoting declaration from former Representative Meehan)); *id.* ("The entire function and history of political parties in our system is to get their candidates elected, and that is particularly true after the primary campaign has ended and the party's candidate has been selected." (quoting Senator McCain's declaration in *McConnell*)); *id.* ("Then-RNC Chairman Haley Barbour stated: 'The purpose of a political party is to elect its candidates to public office, and our first goal is to elect Bob Dole president. . . . Electing Dole is our highest priority, but it is not our only priority. Our goal is to increase our majorities in both houses of Congress and among governors and state legislatures.'" (quoting Barbour letter from *McConnell* record)); *id*. ("State parties also have the primary purpose of winning elections."); *id.* (quoting a LAGOP representative as stating that "certainly we're concerned about issues, but our main emphasis is to run communication in support of electing our candidates.").

The special role of parties in part explains why special rules apply to them, including benefits like higher hard money contribution limits, 52 U.S.C. § 30116(a)(1)(B), (D), freedom to make unlimited transfers among themselves, *id.* § 30116(a)(4), expansive coordinated expenditure limits, *id.* § 30116(d)(2)-(3), and the ability to conduct exempt party activities supporting federal candidates in coordination with them, *supra* p. 12.[9] It is also a key reason why limits on contributions to nonconnected committees have been held unconstitutional — precisely because they did not intend to involve candidates *or political party committees* in their activity, thereby reducing the risk of corruption. *SpeechNow.org v. FEC*, 599 F.3d 686, 696 (D.C. Cir. 2010) (en banc); *EMILY's List v. FEC*, 581 F.3d 1, 6, 8, 14-15, 19 (D.C. Cir. 2009) (explaining that the question was "whether independent non-profits are treated like individual citizens (who under *Buckley* have the right to spend unlimited money to support their preferred candidates) or like political parties (which under *McConnell* do not have the right to raise and spend unlimited soft money)," concluding that "non-profit groups do not have the same inherent relationship with federal candidates and officeholders that political parties do"); *Carey v. FEC*, 791 F. Supp. 2d 121, 125-26 (D.D.C. 2011).[10] Indeed, the D.C. Circuit in *SpeechNow.org*

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[9] By contrast, funds that a regular committee uses to coordinate with candidates are subject to the contribution limits in 52 U.S.C. § 30116(a)(1)(A), which are $2,700 or $5,000 per election, depending on the type of committee.

[10] *Accord N.C. Right to Life, Inc. v. Leake*, 525 F.3d 274, 292-93 (4th Cir. 2008) ("*McConnell* specifically emphasized the difference between political parties and independent expenditure political committees, which explains why contribution limits are acceptable when applied to the former, but unacceptable when applied to the latter. . . . It is thus not an exaggeration to say that *McConnell* views political parties as different in kind than independent expenditure committees."); *Republican Party of N.M. v. King*, 741 F.3d 1089, 1102-03 (10th Cir. 2013) (noting that "[a] state political party, due to *McConnell*, is much less likely to bring a successful as-applied challenge to a limitation on the contributions it may receive" (quoting *McConnell*, 540 U.S. at 153)); *Long Beach Area Chamber of Commerce v. City of Long Beach*, 603 F.3d 684, 696, 698 (9th Cir. 2010) (stating that *McConnell* upheld limitations on contributions to political parties due to their close relationship to candidates before concluding that "the City offers no basis on which to conclude that the Chamber PACs have the sort of close

specifically distinguished *Colorado I* by observing that that case concerned expenditures by political parties. 599 F.3d at 695. Due to the special role parties play in our democratic process and their inherent connection with candidates and officeholders, permitting individuals to make massive soft money contributions to parties presents a significant risk of corruption.

Moreover, plaintiffs' challenge ignores that Congress *already* shaped section 30125(b) to accommodate much "independent" FEA activity by state and local committees in the Levin amendment that plaintiffs say they do not want to use (but that scores of other such entities do use (SOMF ¶¶ 33)). State and local committees presumptively are treated as "affiliated committees" and, unless the presumption is rebutted, share the federal limit of $10,000 due to their close relationship, 52 U.S.C. § 30116(a)(1)(D). However, in the Levin context, "[s]tate, district, and local committees of the same political party shall not be considered affiliated." 11 C.F.R. § 300.31(d)(3); 52 U.S.C. § 31025(b)(2)(B)(iii). Accordingly, state and local committees are permitted to raise funds using a separate limit of up to $10,000 in their Levin accounts for the FEA that they wish to do with that independently-raised "homegrown" money. 52 U.S.C. § 30125(b)(2)(B)(iii)-(iv). Plaintiffs claim a right to do "independent" FEA with relaxed contribution limits, but Congress has already established a framework for such activity that fits with the need to deter actual and apparent quid pro quo arrangements.

Plaintiffs' core argument (Pls.' Mem. at 22-26) that post-*McConnell* limitations on the government's anticorruption interests have undermined *McConnell*'s soft money holding was

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relationship with candidates that supports a plausible threat of corruption or the appearance thereof"); *Stay the Course W. Va. v. Tennant*, Civ. No. 12-1658, 2012 WL 3263623, at *6 (S.D. W. Va. Aug. 9, 2012) (citing *Leake*'s analysis about why contribution limits on political parties are acceptable, but such limits on independent expenditure groups are not); *Yamada v. Weaver*, 872 F. Supp. 2d 1023, 1041 (D. Haw. 2012) ("Although the government can still limit contributions made directly to candidates or parties, . . . contribution limitations to [independent expenditure only organizations] violate the First Amendment."), *aff'd sub nom. Yamada v. Snipes*, 786 F.3d 1182 (9th Cir.), *cert. denied sub nom. Yamada v. Shoda*, 136 S. Ct. 569 (2015).

rejected in *RNC*. In *RNC*, Republican state and local party committees argued that after *Citizens United* "no viable theory of corruption justifies" section 30125(b). 698 F. Supp. 2d at 158. The district court disagreed, holding that *McConnell* had already determined that unlimited funds posed a danger of corruption however the recipient party committee may use those funds. *Id.* at 157. Further, it held that *McConnell* had upheld the soft money ban not just on the basis of an interest in deterring preferential access, a theory later rejected by *Citizens United*, but also due to the danger of quid pro quo corruption and its appearance inherent in the close relationship between federal candidates and officeholders and political party committees. *Id.* at 158-59.

In making the same argument here, plaintiffs' simply substitute "*McCutcheon*" for "*Citizens United*" and attempt to derive holdings from *McCutcheon*, such as the plurality's supposed rejections of "indebtedness" as an element of quid-pro-quo corruption and the notion that "'large' contributions are not corrupting absent quid-pro-quo exchanges *with candidates*." (Pls.' Mem. at 25 n.25.) *But see McCutcheon*, 134 S. Ct. at 1461 (explaining that it would be corrupting to funnel money to a candidate "for which the candidate feels *obligated*" (emphasis added)). These alleged holdings do not appear anywhere in the *McCutcheon* opinion and would contradict the plurality's express holding that it was not overruling *McConnell*. What the plurality actually said was that it was "leav[ing] the base limits undisturbed. Those base limits," which apply to plaintiffs through section 30125(b), "remain the primary means of regulating campaign contributions." *Id.* at 1451.

Critically, the *RNC* court determined that the challenge in that case was "'based on the same factual and legal arguments the Supreme Court expressly considered when rejecting a facial challenge to that provision.'" *Rufer*, 64 F. Supp. 3d at 203 (quoting *RNC*, 698 F. Supp. 2d at 157). That challenge was "'not so much an as-applied challenge as it [was] an argument for

overruling a precedent.'" *Id.* (quoting *RNC*, 698 F. Supp. 2d at 157). The single-judge opinion in this case similarly explained that the "state-party plaintiffs in [*RNC*] . . . sought to conduct activity very similar to that which plaintiffs wish to conduct here." (Mem. Op. at 15 (comparing *RNC* opinion to plaintiffs' complaint).) Accordingly, just as there was nothing "substantially new presented in plaintiffs' as-applied challenge to § [30125](b)" in *RNC*, 698 F. Supp. 2d at 161, there is nothing substantially new here either. As in *McConnell* and *RNC*, plaintiffs simply seek the same relief of avoiding FECA's $10,000 contribution limit for FEA on the same false premise that no "cognizable" quid-pro-quo corruption interest justifies the Act's restriction of their proposed activities. (Pls.' Mem. at 1, 18, 22-25, 27, 31, 36-37, 39-45; Compl. ¶¶ 121, 123, 134-35, 145, 151.) Plaintiffs' challenge must be rejected because *McConnell* concluded that section 30125 is constitutional "regardless of how those funds are ultimately used," 540 U.S. at 155 — a ruling the Court has since confirmed three times. *Citizens United*, 558 U.S. at 361; *RNC*, 698 F. Supp. 2d at 158-59, *aff'd*, 561 U.S. 1040; *McCutcheon*, 134 S. Ct. at 1451 n.6.[11]

B. The Risks of Corruption and Its Appearance Justify the Soft Money Restrictions As Applied to Plaintiffs' Proposed Federal Election Activity

Section 30125's soft money restrictions are closely drawn to curb substantial risks of corruption and its appearance that the Supreme Court has consistently affirmed are sufficiently important to support such a law. *McCutcheon*, 134 S. Ct. at 1450 ("As *Buckley* explained, Congress may permissibly seek to rein in 'large contributions [that] are given to secure a political *quid pro quo* from current and potential office holders.'" (quoting *Buckley*, 424 U.S. at

[11] Plaintiffs expressly make no independent showing on their challenge to section 30125(c). (Pls.' Mem. at 36-37 & n.38.) Although plaintiffs do not have standing to challenge section 30125(c) because they have failed to identify anything they wish to do that section 30125(c) restricts, *accord, e.g.*, Mot. to Dissolve at 11-12 (admitting that there is nothing OPGOP would like to do but cannot), the Commission agrees for purposes of this motion that the restrictions on section 30125(c) are justified by the same anticorruption interests that underlie section 30125(b).

26)); *id.* ("In addition to 'actual *quid pro quo* arrangements,' Congress may permissibly limit 'the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions' to particular candidates." (quoting *Buckley*, 424 U.S. at 27)). Indeed, the *McCutcheon* plurality observed that the anticorruption interests served by the Act's contribution limits, including section 30125, are not only substantial but "may properly be labeled compelling." *Id.* at 1445 (internal quotation marks omitted). The Court has also observed that the "quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the justification raised," but the "idea that large contributions to a national party can corrupt or, at the very least, create the appearance of corruption of federal candidates and officeholders is neither novel nor implausible." *McConnell*, 540 U.S. at 144 (citation and internal quotation marks omitted). Here, the evidence confirms the plausible: soft money contributed to parties is a highly valuable quid for which a candidate or officeholder may exchange an improper quo regardless of how the money is ultimately spent.

1. Permitting Plaintiffs to Raise Unlimited Soft Money Will Again Turn Them Into Conduits for Corruption

In passing section 30125(b), Congress recognized that the national political parties would react to its restrictions on soft money "by directing soft-money contributors to the state committees, and that federal candidates would be just as indebted to these contributors as they had been to those who had formerly contributed to the national parties." *McConnell*, 540 U.S. at 165. Congress thus sought to "[p]revent[] corrupting activity from shifting wholesale to state committees" or local committees "and thereby eviscerating FECA." *Id.* at 165-66; Mem. Op. at 7 (the remedy plaintiffs seek would "effectively eviscerate" FECA's limits).

Congress's understanding was borne out by evidence in the *McConnell* record showing that "[p]arties can stretch their soft money even further by transferring soft and hard money to state parties where they can achieve a better ratio of soft to hard dollars than if they spent the money themselves." 251 F. Supp. 2d at 454 (opinion of Kollar-Kotelly, J.) (quoting Magleby Expert Report). The national political parties took advantage of this loophole. "One RNC memorandum contains a chart which 'clearly demonstrates what we already clearly know, that any media we place in the target presidential states should be placed through state parties.'" *Id.* (quoting RNC Memorandum dated March 18, 1996, titled "Ballot Allocation of Target States"). "The memorandum conclude[d] that by using the state political parties, rather than directly making the purchase, the RNC would save $2.8 million in federal funds on a $10 million media buy." *Id.*; *see also id.* ("'Both political parties have found spending soft money with its accompanying hard money match through their state parties to work smoothly, for the most part, and state officials readily acknowledge they are simply "pass throughs" to the vendors providing the broadcast ads or direct mail'" (quoting Magleby Expert Report); *id.* at 818 (opinion of Leon, J.) ("'The national Democratic party managed to finance two-thirds of its pro-Clinton "issue ad" television blitz by taking advantage of the more favorable allocation methods available to state parties. They simply transferred the requisite mix of hard and soft dollars to party committees in the states they targeted and had the state committees place the ads.'" (quoting Mann Expert Report)). Thus, the Supreme Court found that "state committees function as an alternative avenue for precisely the same corrupting forces":

> "The fact is that much of what state and local parties do helps to elect federal candidates. The national parties know it; the candidates know it; the state and local parties know it. If state and local parties can use soft money for activities that affect federal elections, then the problem will not be solved at all. The same enormous incentives to raise the money will exist; the same large contributions by corporations, unions, and wealthy

> individuals will be made; the federal candidates who benefit from state party use of these funds will know exactly whom their benefactors are; the same degree of beholdenness and obligation will arise; the same distortions on the legislative process will occur; and the same public cynicism will erode the foundations of our democracy — except it will all be worse in the public's mind because a perceived reform was undercut once again by a loophole that allows big money into the system."

McConnell, 540 U.S. at 164 & n.59 (quoting Rudman Decl.).

Plaintiffs' premise that existing rules for party financing apart from those related to "federal election activity," including general limits on coordinated spending, "eliminate[]" any prospect of quid pro quo corruption in this context (*e.g.*, Pls.' Mem. at 36) is false. Evidence developed in this case demonstrates that. Donors and candidates do not need to coordinate with plaintiffs in order to use them as surrogates to engage in quid pro quo arrangements. Plaintiffs would not even need to be aware that they were being used this way. For example, when then-Congressman Bill Cassidy was running a competitive Senate race against then-Senator Mary Landrieu in 2014, his campaign committee raised funds for LAGOP through a joint fundraising vehicle without LAGOP knowing that the Cassidy campaign was raising them. (SOMF ¶¶ 75.) These funds included contributions raised from donors who had already given the maximum to Senator Cassidy's campaign, who then gave money to LAGOP's federal account for use on a "mail fund" that appears to have been used for exempt party activities, was in large part controlled by Senator Cassidy's campaign, was spent on FEA supporting his election, and reserved only a 10% portion for "overhead" for LAGOP. SOMF ¶¶ 74-78; *accord McConnell*, 251 F. Supp. 2d at 454 (opinion of Kollar-Kotelly, J.) (explaining that in the soft money era state committees acted as """"pass throughs""" (quoting Magleby Expert Report)).[12] Representatives

[12] Federal candidates directing "maxed out" contributors to LAGOP is nothing new. (SOMF ¶¶ 52 (2008 House candidate asked contributors who had given the maximum to his campaign committee to give additional funds to LAGOP).)

of LAGOP were not present when these funds were raised from donors, so LAGOP is unaware of the circumstances in which they were given. (SOMF ¶ 75.) It is thus easy to see how, if plaintiffs obtain the relief they seek, contributions of $100,000 or more to LAGOP could be a quid for which the contributor extracts a quo from a candidate. *Infra* pp. 40-45; SOMF ¶¶ 11, 16-19, 106-07, 109-15, 118-20, 123-28, 130-34 (listing numerous instances in which contributors gave to national, state, and local parties in exchange for actual or apparent official acts).[13]

As LAGOP's chairman himself recognized from his own fundraising experience, donors have particular preferences, including with respect to the issues they care about, and contribute to candidates who can take desired executive or legislative action. SOMF ¶ 63; *accord McConnell*, 251 F. Supp. 2d at 476 (Kollar-Kotelly, J.) ("'[D]onors do not really differentiate between hard and soft money; they often contribute to assist or gain favor with an individual politician.'" (quoting Senator Simpson)). Those motivations can certainly go beyond seeking mere "influence" to seeking an exchange of funds for political favors. (*See, e.g.*, SOMF ¶¶ 106-34.) Accordingly, were FECA's soft money provisions to be invalidated or rendered meaningless, donors seeking to purchase policy outcomes and candidates ready to sell them would likely exploit the abilities of state and local committees to influence federal elections with FEA. As Congress and the Supreme Court have recognized, PASO ads in particular are one such tool.[14]

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[13] Furthermore, plaintiffs also fail to explain how they will maintain independence should they be successful here. (SOMF, Exh. 7, LAGOP 30(b)(6) Dep. at 140:16-24; SOMF ¶¶ 82, 86 (testimony that plaintiffs have made no plans to maintain independence).) This may in part be attributed to the permission for coordination on exempt party activities, a distinction from nonparty groups plaintiffs have not addressed. In any event, plaintiffs have not carried their burden to show that they *can* do what they seek to do. *Cf. RNC*, 698 F. Supp. 2d. at 158-59 (rejecting plaintiffs' various promises to avoid corrupting activity).

[14] The *McConnell* Court observed that such "ads were a prime motivating force behind BCRA's passage": the Senate's hearings had "'provided overwhelming evidence that the twin loopholes of soft money and bogus issue advertising have virtually destroyed our campaign

The principle that payments made to a surrogate (such as a state or local party) may have the same corruptive effect as payments made directly to a federal official or candidate is a fundamental tenet of many federal anticorruption and conflict-of-interest laws. The federal criminal prohibition against the payment and receipt of bribes and illegal gratuities, for example, encompasses payments made to a third party designated by the relevant federal official, so long as the requisite connection between the payment and official action is present. *See* 18 U.S.C. § 201(b)(1).[15] The evident premise of that prohibition is that a federal officer or employee can be bribed through payments to an organization with which he or she is closely affiliated, such as a state or local party committee. Congress, the experts on candidates, was entitled to reach that same conclusion with respect to candidates for federal office (many of whom are already incumbent officeholders). Thus, whether a party committee spends a quid on a PASO ad or voter contact activity, the critical fact is that a donor's provision of those funds is *itself* what can be traded for a candidate's quo. (*See* SOMF ¶ 132-34 (alleging that Senator Menendez's staff raised funds for use on FEA, including voter contact activity, as part of a quid-pro-quo scheme).)

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finance laws, leaving us with little more than a pile of legal rubble.'" 540 U.S. at 169-70 (quoting S. Rep. 105-167 at 4535 (additional views of Sen. Collins)). The Court found that, as to the substantial influence of such advertising on federal elections, "[t]he record on this score could scarcely be more abundant." *Id.* For example, the Court quoted the script of a television advertisement attacking Bill Yellowtail, a 1996 federal candidate, through non-express advocacy that criticized his family values and described him as "'a convicted felon.'" *Id.* at 193 & n.78 (quoting S. Rep. 105-167 at 6305 (minority views)). Here, plaintiffs' proposed advertisement supporting Bobby Jindal (Compl. ¶ 105 ("'Let's face the Facts. Bobby Jindal has been the nation's finest example of a Republican leader . . . .'")) was precisely the kind of PASO communication that BCRA was passed to regulate. *McConnell*, 540 U.S. at 193.

[15] Ethics regulations for Executive Branch employees likewise provide that the "gift[s]" subject to the regulatory restrictions include gifts "[g]iven to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee." 5 C.F.R. § 2635.203(f)(2). Senate Rule 35(b)(2)(A) is to the same effect.

2. Decades of Evidence Confirms That Plaintiffs' Request to Reopen the Soft Money Loophole Will Lead to Actual and Apparent Quid Pro Quo Corruption

Plaintiffs demand "evidence of quid-pro-quo corruption" in order to justify the soft money restrictions (Pls.' Mem. at 44-45), but the Supreme Court has consistently recognized the difficulty of providing evidence from "the counterfactual world in which" the existing campaign finance restrictions plaintiffs challenge "do not exist." *McCutcheon*, 134 S. Ct. at 1457; *Burson v. Freeman*, 504 U.S. 191, 208 (1992) (plurality) ("The fact that these laws have been in effect for a long period of time also makes it difficult for the States to put on witnesses who can testify as to what would happen without them."); *Colorado II*, 533 U.S. at 457 (noting the "difficulty of mustering evidence to support long-enforced statutes" because "there is no recent experience" without them). And when confronted with overwhelming and substantial evidence of the risk and appearance of corruption, plaintiffs make contentions belied by the facts.

Plaintiffs thus contend, relying exclusively on quotations from dissenting opinions, that the record in *McConnell* reflected no quid-pro-quo corruption. (*E.g.*, Pls.' Mem. at 1, 25 n.26.) But in fact that record was, the Supreme Court said, "*to the contrary*." *McConnell*, 540 U.S. at 150 (emphasis added). The majority, not the dissent, found that the "evidence connect[ed] soft money to manipulations of the legislative calendar, leading to Congress' failure to enact, among other things, generic drug legislation, tort reform, and tobacco legislation." *Id.*; *see also id.* (citing evidence of how, *e.g.*, "'[d]onations from the tobacco industry to Republicans scuttled tobacco legislation, just as contributions from the trial lawyers to Democrats stopped tort reform'"). The evidence may not have been sufficient to support criminal bribery prosecutions — which is not required, *see Buckley*, 424 U.S. at 27-28 (rejecting overbreadth argument by explaining that bribery laws "deal with only the most blatant and specific attempts of those with

money to influence governmental action") — but these were apparent quid-pro-quos on a massive scale. *McConnell*, 540 U.S. at 150. The "meltdown of the campaign finance system" caused by "the soft-money loophole," which spurred BCRA's passage, *id.* at 94, was not the result of corruption-free activity, as plaintiffs contend. Congress certainly did not think so.

The "treasure trove" of record evidence in *McConnell* was exhaustively catalogued in several lower court opinions. *See*, *e.g.*, 251 F. Supp. 2d at 481-512 (opinion of Kollar-Kotelly, J.). That record contains frank testimony from former officeholders about how large soft money donors to political parties were able to exchange their donations for favorable legislative outcomes. For example, former Senator Paul Simon testified about consideration of the amendment of a bill that would benefit Federal Express, a large soft-money donor to the Democratic Party. *McConnell*, 251 F. Supp. 2d at 482 (Kollar-Kotelly, J.). Simon stated that, after one Senator said "we've got to pay attention to who is buttering our bread," the Democratic caucus voted to move ahead on the legislation, and Simon believed that "[t]his was a clear example of donors getting their way, not on the merits of the legislation, but just because they had been big contributors." *Id.* (quoting Simon Decl.); *see also Colorado II*, 533 U.S. at 451 n.12 (2001) (quoting Senator Simon's statement that "I believe people contribute to party committees on both sides of the aisle for the same reason that Federal Express does, because they want favors. There is an expectation that giving to party committees helps you legislatively").

Senator John McCain and former Senator Warren Rudman provided similar evidence. *McConnell*, 251 F. Supp. 2d at 496 ("Senators are pressed by their benefactors to introduce legislation, to amend legislation, to block legislation, and to vote on legislation in a certain way. No one says: 'We gave money so you should do this to help us.' No one needs to say it — it is perfectly understood by all participants in every such meeting." (quoting Rudman Declaration));

SOMF ¶ 107 (Senator McCain's testimony describing the Senate Democratic leadership's blocking of a proposed amendment to Sarbanes-Oxley at the behest of a large soft money donor).

The history of campaign finance in the United States clearly shows that quid pro quo corruption does not just occur through contributions made directly to candidates; political parties and organizations have played a critical role in such corruption, including in such notorious scandals as Boss Tweed and the Tammany Hall machine, the 1876 Tilden/Hayes presidential election, the Custom House scandals of the 1880s, Teapot Dome, and the Prendergast Machine. As described earlier, prior to the enactment of the Hatch Act, political parties had engaged in quid pro quo corruption involving federal legislation, contracts, and jobs. *See supra* pp. 4-7. The Commission's Statement of Material Facts demonstrates the recurrence of "dismaying" incidents, *cf. Wagner v. FEC*, 793 F.3d 1, 17 (D.C. Cir. 2015) (en banc), *petition for cert. denied sub nom. Miller v. FEC*, No. 15-428, 2016 WL 207263 (2016), of actual and apparent quid pro quos involving contributions to national, state, and local parties. Such contributions have been part of actual or apparent exchanges in a vast array of contexts, including: (1) ambassadorial appointments by various administrations to reward substantial campaign contributors and bundlers (SOMF ¶¶ 18-19, 130-31); (2) interference with the normal functioning of U.S. agencies, such as President Nixon's decision to reverse the Department of Agriculture on behalf of the dairy industry with a price support decision that cost the public about $100 million (*see supra* p. 7; SOMF ¶ 17), decisions by the Department of Interior concerning the regulation of tribal casinos (SOMF ¶¶ 113-14), and decisions of the National Security Council concerning an oil-pipeline project favored by Roger Tamraz (*id.* ¶ 115); (3) executive clemency decisions (*id.* ¶¶ 109-10); (4) legislative action or inaction, including the "series of quid pro quos" made by the former lobbyist Jack Abramoff and former Ohio Representative Bob Ney, *Wagner*, 793 F.3d at

15, such as Ney's agreement to slip a sentence into the Help America Vote Act to help one of Abramoff's clients open a casino in Texas (*id.* ¶¶ 116-17, 119), Ney's agreement to insert statements into the *Congressional Record* that Abramoff could use to his business advantage in a Florida-based deal (*id.* ¶ 120), and other "quid pro quo[s]" that Abramoff characterized as "one of the hallmarks of our lobbying efforts" (*id.* ¶ 121); "cattle call" shakedowns of lobbyists and their clients by a former Wisconsin Senate Majority Leader (*id.* ¶¶ 123-26); and pay-to-play schemes at the state level (*id.* ¶¶ 127-28); and (5) other abuses, such as former Alabama governor Don Siegelman's appointment of Richard Scrushy to a regulatory board in exchange for a half-million dollar payment to the state's lottery system (*id.* ¶ 129).

The recent evidence also includes apparent arrangements specifically involving contributions to a state party raised for use on FEA to benefit a federal candidate. On April 1, 2015, Senator Robert Menendez of New Jersey and Dr. Saloman Melgen, a Florida-based ophthalmologist, were indicted on twenty-two criminal counts, including bribery and wire fraud. (SOMF ¶ 132.) According to the Indictment, the Senator and Dr. Melgen traded political favors for campaign donations, among other things. The quid included over $750,000 in contributions from Dr. Melgen and family members to entities including party committees supporting the Senator. The quo included intervening on Dr. Melgen's behalf in a contract dispute with the Dominican Republic and a Medicare dispute worth approximately $8.9 million. (*Id.*)

In April 2012, a Senator Menendez staffer made "a big ask" from Dr. Melgen, specifically contributions to a state party committee for use on FEA:

> "I am trying to raise money into the New Jersey Democratic State Committee. The Committee is vital to the Senator's efforts as the state party will conduct voter contact and get out the vote activities on behalf of Senator Menendez and other congressional candidates in the state. The account is named New Jersey Democratic State Committee Victory

> Federal. The limit per individual is $10,000. Could Dr. Melgen and family members consider giving a total of $40,000?"

(SOMF ¶ 133.) Dr. Melgen's staff responded unequivocally that, "[r]egarding your request . . . don't worry. We will take care of it. Dr. Melgen will be calling you tomorrow to speak further." (*Id.*) On May 16, 2012, about two weeks after the "big ask," Dr. Melgen and his wife gave $20,000 to the New Jersey Democratic State Committee Victory Fund Account. The same day, Dr. Melgen's daughter and husband contributed $20,000 to the same committee. This donation was reimbursed by Dr. Melgen through a $20,000 check from his ophthalmology practice to his daughter. Still on that same day, Senator Menendez advocated on Dr. Melgen's behalf in a meeting with the Assistant Secretary of State for the Bureau of International Narcotics and Law Enforcement Affairs, regarding the Dominical Republic contract dispute. (*Id.*)

This evidence is merely illustrative, not exhaustive.[16] But it leaves no room for doubt that reopening the soft money loophole in the manner plaintiffs propose will provide opportunities for quid pro quo corruption that will be too tempting to resist. "Money, like water, will always find an outlet," *McConnell*, 540 U.S. at 224, and the Court should readily conclude that the reopening of the soft money outlet threatens no less than the destruction of remaining "campaign finance laws, leaving us with little more than a pile of legal rubble," *id.* at 129-30 (internal quotation marks omitted). That was Congress's conclusion.

It is also the conclusion members of the public overwhelmingly drew in a national poll about the expected consequences of activities like plaintiffs have proposed. (SOMF ¶ 135 (well

[16] Although the Commission's many examples in its Statement of Material Facts tend to describe relatively straightforward quid pro quo arrangements in which contributions were made, in the real world the possibilities for increased soft money donations have far more nuance. The *potentiality* of a $100,000 or $1 million contribution itself permits donors to wield improper influence over candidates. Thus, the extraction of an official act in exchange for a donor's promise not to fund a competitor candidate through a state or local party donation is still a quid pro quo; it just happens to be one that leaves no trail of incriminating contribution records.

over 70% of respondents in 2016 YouGov.com poll believed that it was at least "somewhat likely" that contributions for such activity would be made in exchange for political favors).)

And it is the unrebutted conclusion of the political science expert who testified in this case. As Professor Jonathan Krasno explained, "[s]hould the plaintiffs prevail here, their victory will bring the national party organizations back into the business of raising soft money by acting through compliant state and local party organizations. This is exactly what happened before and exactly what will happen again, except on a much larger scale." (SOMF ¶ 136.)

3. Section 30125(b) Is Very Closely Drawn

The foregoing discussion confirms the *McCutcheon* plurality's observation that the important anticorruption interests served by contribution limits such as those in section 30125(b) are not merely substantial but "compelling." *McCutcheon*, 134 S. Ct. at 1445 (internal quotation marks omitted). As *Buckley* explained, it is "difficult to isolate suspect contributions" and "the interest in safeguarding against the appearance of impropriety requires that the opportunity for abuse inherent in the process of raising large monetary contributions be eliminated." *Id.* at 30; *see also FEC v. Nat'l Conservative Pol. Action Comm.*, 470 U.S. 480, 500 (1985) (noting the Court's "deference to a congressional determination of the need for a prophylactic rule where the evil of potential corruption had long been recognized"). "The Government's strong interests in preventing corruption, and in particular the appearance of corruption, are thus sufficient to justify subjecting *all* donations to national parties to the source, amount, and disclosure limitations of FECA." *McConnell*, 540 U.S. at 156 (emphasis added). And by providing that donors may contribute up to $10,000 for state and local parties' use on the four carefully defined categories of FEA, Congress has drawn a line that balances the First Amendment rights at stake with the important countervailing interests in limiting the risk and appearance of corruption.

The evidence in this case confirms the *McConnell* Court's conclusion that the section 30125(b) limit readily satisfies closely drawn scrutiny. The record establishes that plaintiffs are aware of *no one* who wants to make a contribution to them of more than $10,000. (SOMF, FEC Exh. 7, LAGOP 30(b)(6) Dep. at 127:21-24; SOMF ¶¶ 82, 85.) No one wishes to contribute to the local party plaintiffs at all. (SOMF ¶¶ 82, 85.) Because there is no expression being restricted by section 30125(b), the Court should find that the limit has been so closely drawn that, as applied here, it imposes no restrictions whatsoever.

And even if it were assumed that someone does wish to contribute more than $10,000 to plaintiffs, section 30125(b) is still closely drawn. According to LAGOP's Executive Director, the pool of contributors capable of making contributions of $10,000 or more to LAGOP or the other plaintiffs "is probably below 100" people. (SOMF, FEC Exh. 7, LAGOP 30(b)(6) Dep. at 135:12-20.) Thus, the application of the limits here "focuses precisely on the problem of large campaign contributions," *Buckley* 424 U.S. at 28, as Congress intended. Moreover, the fewer than a hundred people in the small pool LAGOP identified are able to give $10,000 to plaintiffs annually for use on FEA, thereby associating with the committees and voicing their "general expression of support," which "rests solely on the undifferentiated, symbolic act of contributing." *Buckley*, 424 U.S. at 21. Such persons can also make unlimited expenditures and are free "to assist personally in the association's efforts on behalf of candidates." *Id.* at 22; *id.* at 21-22 (the "overall effect of the Act's contribution ceilings is merely to require . . . political committees to raise funds from a greater number of persons and to compel people who would otherwise contribute amounts greater than the statutory limits to expend such funds on direct political expression"). Thus, even if plaintiffs had identified a contributor who wished to give them an excess contribution, the contribution limit's effect would be "marginal." *Id.* at 20-21.

That analysis does not even account for the Levin provision. By permitting state and local committees to use some nonfederal funds for several kinds FEA, raised under a separate limit of up to $10,000, the Levin Amendment softened the impact of section 30125(b)(1). The amendment was "[a] refinement on the pre-BCRA regime that permitted parties to pay for certain activities with a mix of federal and nonfederal funds." *McConnell*, 540 U.S. at 162. Because the Levin account limit applies on an annual basis and is separate from the limit for its federal account, LAGOP actually could receive up to $80,000 from a single contributor over the course of four years ($10,000 per year to each of its federal and Levin accounts). During that same period, if LAGOP were subject only to the higher Louisiana state limit of $100,000-per-four-years that plaintiffs prefer (and could not also accept four additional annual federal contributions of $10,000), it could raise a maximum of $100,000 from a single contributor. That is $20,000 more ($100,000 vs. $80,000) over a four-year period, or an average of $5,000 more annually. If plaintiffs are "satisfied that some limit on contributions is necessary, a court has no scalpel to probe, whether, say, a [$25,000 annual] ceiling might not serve as well as [$20,000]." *Buckley*, 424 U.S. at 30 (internal quotation marks omitted) (discussing amounts with 2:1 ratio). LAGOP cannot credibly claim a lack of proportionality if its wish to spend $100,000 can be accommodated by expanding its donor pool beyond a single, hypothetical individual.

Notwithstanding these relatively small contribution differences, plaintiffs also appear to base their objection to Levin funds on the types of FEA that are permitted to be paid for in part with those funds. (Pls.' Mem. at 3 n.7 (objecting to "restrict[ions]" on Levin funds).) But the more plaintiffs allege that the kinds of FEA they wish to engage in are those not permitted by Levin funds, the more they acknowledge that the activity they would like to do is precisely the

activity Congress believed was of greater benefit to federal candidates and posed a greater danger of quid pro quo corruption.[17]

In addition, plaintiffs have failed to demonstrate or even allege that the contribution limits have prevented them from "amassing the resources necessary for effective advocacy." *McConnell*, 540 U.S. at 135 (quoting *Buckley*, 424 U.S. at 21). Nor could they. The local parties do not raise any contributions, let alone contributions that comport with Louisiana but not federal law. And LAGOP is fully capable of engaging in effective advocacy while complying with the current contribution limits. Its designee testified, for example, that the millions of dollars it spent on Senator Cassidy's race helped Senator Cassidy win his race. (SOMF ¶ 72; *see also id.* ¶¶ 73, 87-88.) The same is true of political parties generally. "From 1992 to 2006, political party spending 'increased tenfold.'" *Cao*, 688 F. Supp. 2d at 517 (quoting FEC's expert Professor Krasno). Furthermore, political party committees like plaintiffs received over $1.6 billion in contributions in the two-year 2012 presidential election cycle and over $1.4 billion in the 2014 cycle, a record total for a non-general election cycle. (SOMF ¶ 95.) Moreover, as the FEC's expert explained, "the national committees raised more in hard money alone in 2004 ($1.46 billion) than they had in hard and soft money combined in 2000 ($751 million), and their hard

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[17] *Compare McConnell*, 251 F. Supp. 2d at 702-03 (Kollar-Kotelly, J.) (explaining that the activity that can be paid for with a portion of Levin funds in FEA categories (1) and (2) is more likely to concern "state and local elections"), *and* 147 Cong. Rec. S3124 (daily ed. Mar. 29, 2001) (statement of Sen. Levin) ("[T]his amendment will allow the use of some non-Federal dollars by State parties for voter registration and get out the vote, where the contributions are allowed by State law, where there is no reference to Federal candidates, where limited to $10,000 of the contribution which is allowed by State law, and where the allocation between Federal and non-Federal dollars is set by the [FEC]."), *with supra* pp. 38-39 n.14 (advertisement attacking federal candidate Bill Yellowtail), Compl. ¶¶ 104-105 (scripts "[c]elebrating" federal candidate Bobby Jindal and describing Hillary Clinton as "more 'hope & change,'" which could not be paid for using Levin funds because they clearly identify federal candidates, 52 U.S.C. § 30125(b)(2)(B)(i)), *and McConnell*, 540 U.S. at 169 ("Such [PASO] ads were a prime motivating force behind BCRA's passage.").

money receipts in 2006 ($1.082 billion) exceeded their hard and soft money receipts in 2002 ($651 million). Even without soft money, the six national party committees have gone on to set new fundraising records in each election cycle since 2006 . . . ." (*id.*; *see also id.* ¶ 101 (also explaining that "political parties enjoy a set of substantial legal advantages elsewhere in campaign finance and election law that rendered their complaints about [BCRA's] ban on soft money less powerful"); *supra* p. 9 (BCRA increased hard money limits to offset soft money ban).)[18]

Section 30125(b) closely fits the important interest in combating actual and apparent quid pro quo corruption, and there is no "substantial mismatch between the Government's stated objective and the means selected to achieve it." *McCutcheon*, 134 S. Ct. at 1446, 1456-57.

IV. SECTION 30104(e)(2) IS ALSO CONSTITUTIONAL

Plaintiffs assert no independent reason why the reporting provision they challenge, 52 U.S.C. § 30104(e)(2), is unconstitutional. *See supra* p. 34 n.11. But in any event, plaintiffs' claim that the government can justify FECA's disclosure provisions only through evidence of quid pro quo corruption is wrong. The Act's disclosure provisions are evaluated not based on whether they are closely drawn to match the government's important interest in limiting quid-pro-quo corruption, the contribution limit standard, *McCutcheon*, 134 S. Ct. at 1445, but whether they have a substantial relation to the government's important interests, *Citizens United*, 558

[18] Plaintiffs' extended policy-based arguments that rely on conclusory statements without evidence made during the FEC's 2014 forum or by various commentators (*e.g.*, Pls.' Mem. at 5-7, 20-21) are similarly misconceived. Representatives of both political parties made similar inaccurate representations about the imminent collapse of state and local parties at the time of BCRA's adoption. (SOMF ¶ 101 (correcting the idea that the soft money ban would "'take[] the parties out of politics'").) More importantly, it is not the Court's "role to question Congress's policy choice to limit contributions to political parties." *RNC*, 698 F. Supp. 2d at 160 n.5.

U.S. at 366-67, such as providing the public with information. The government's disclosure-based interests extend beyond reducing the risk and appearance of quid pro quo corruption.

The Supreme Court and the D.C. Circuit have repeatedly embraced these interests in upholding the Act's disclosure requirements against constitutional challenges. *See, e.g.*, *McCutcheon*, 134 S. Ct. at 1459 ("[d]isclosure requirements are in part justified based on a governmental interest in provid[ing] the electorate with information about the sources of election-related spending" (internal quotation marks omitted)); *Citizens United*, 558 U.S. at 367; *Buckley*, 424 U.S. at 68 (FECA's political committee disclosure requirements "directly serve substantial governmental interests"); *SpeechNow.org*, 599 F.3d at 698 (such requirements further the public's "interest in knowing who is speaking about a candidate and who is funding that speech," and "deter[] and help[] expose violations of other campaign finance restrictions").

Serving these interests, section 30104(e)(2) is plainly constitutional. As the *McConnell* Court concluded: "We agree . . . that the important state interests that prompted the *Buckley* Court to uphold FECA's disclosure requirements — providing the electorate with information, deterring actual corruption and avoiding any appearance thereof, and gathering the data necessary to enforce more substantive electioneering restrictions — *apply in full to BCRA*." 540 U.S. at 196 (emphasis added). That holding, along with plaintiffs' complete absence of contrary proof or even argument about why they cannot comply with FECA's reporting requirements that result from their planned activity, fully resolves plaintiffs' challenge to section 30104(e)(2).

CONCLUSION

For the foregoing reasons, the Court should grant the Commission's motion for summary judgment and deny plaintiffs' motion for summary judgment.

Respectfully submitted,

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March 18, 2016

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REPUBLICAN PARTY OF LOUISIANA, *et al.*,	)	
Plaintiffs,	)	Civ. No. 15-1241 (CRC-SS-TSC)
v.	)	
FEDERAL ELECTION COMMISSION,	)	STATEMENT OF MATERIAL FACTS
Defendant.	)	

FEDERAL ELECTION COMMISSION'S
STATEMENT OF MATERIAL FACTS NOT IN GENUINE DISPUTE
IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

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Pursuant to Local Civil Rule 7(h)(1), the Federal Election Commission ("FEC" or "Commission") submits the following statement of material facts not in genuine dispute in support of its Motion for Summary Judgment. An index of the FEC's exhibits is included. Portions of the text and associated exhibits that plaintiffs have designated as confidential pursuant to the Court's protective order are redacted from the public version of this filing. The Commission will file unredacted materials under seal.

I. THE PARTIES

1. Plaintiff Republican Party of Louisiana ("LAGOP") is a Republican state committee that has registered with the Commission as a "State Committee" under 52 U.S.C. § 30101(15) (as well as 11 C.F.R. § 100.14(a)), and is a "Party committee" at the "State . . . level" under 11 C.F.R. § 100.5(e)(4). LAGOP has and maintains a "federal account," 11 C.F.R. § 300.30(b)(3). (Pl. LAGOP's Responses to FEC's First Set of Disc. Reqs. at 19 (RFA #1) ("LAGOP's Disc. Responses") (FEC Exh. 1).) It also has and maintains a "nonfederal account," 11 C.F.R. § 300.30(b)(1). (LAGOP's Disc. Responses at 19 (RFA #2).) LAGOP has registered as a political committee with the State of Louisiana. (*Id.* at 19 (RFA #3).)

2. Plaintiff Jefferson Parish Republican Parish Executive Committee ("JPGOP") is a Republican "local committee of a political party," 52 U.S.C. § 30125(b)(1), that is "responsible for the day-to-day operation of the political party at the level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a State," 11 C.F.R. § 100.14(b). (Verified Compl. for Declaratory and Injunctive Relief ¶ 7 (Docket No. 1) ("Compl.").) JPGOP is not a federal political committee and has not registered with the FEC. (Pl. JPGOP's Responses to FEC's First Set of Disc. Reqs. at 10 (RFA #4) ("JPGOP's Disc. Responses") (FEC Exh. 2).)

3. Plaintiff Orleans Parish Republican Executive Committee ("OPGOP") is a Republican "local committee of a political party," 52 U.S.C. § 30125(b)(1), that is "responsible for the day-to-day operation of the political party at the level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a State," 11 C.F.R. § 100.14(b). (Compl. ¶ 8.) OPGOP is not a federal political committee and has not registered with the FEC. (Pl. OPGOP's Responses to FEC's First Set of Disc. Reqs. at 10 (RFA #4) ("OPGOP's Disc. Responses") (FEC Exh. 3).)

4. The FEC is an independent agency vested with statutory authority over the administration, interpretation, and civil enforcement of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-146 ("FECA" or "Act"). Congress authorized the Commission to "formulate policy" with respect to FECA, 52 U.S.C. § 30106(b)(1); "to make, amend, and repeal such rules . . . as are necessary to carry out the provisions of [FECA]," *id.* §§ 30107(a)(8), 30111(a)(8); and to investigate possible violations of the Act, *id.* § 30109(a)(1)-(2). The FEC has exclusive jurisdiction to initiate civil enforcement actions for violations of FECA in the United States district courts. *Id.* §§ 30106(b)(1), 30109(a)(6).

II. STATUTORY AND REGULATORY BACKGROUND

A. Early Examples of Party-Related Corruption and Efforts at Campaign Finance Regulation

5. Since the nation's founding, political parties have presented special concerns of corruption. Indeed, "[p]artisan politics bears the imprimatur only of tradition, not the Constitution," *Elrod v. Burns*, 427 U.S. 347, 369 n.22 (1976) (plurality), and the Constitution's Framers consciously created a framework of checks and balances to restrain the power of political parties, *see* Richard Hofstadter, *The Idea of a Party System* 3, 53 (1970); E.E. Schattschneider, *Party Government* 7 (1942) (citing *The Federalist*, No. 10 (Madison)). George

Washington warned that although political parties can play a useful role, if their power is not checked they can destroy the government through corruption: "I have already intimated to you the danger of parties in the State. . . . It opens the door to foreign influence and corruption, which find a facilitated access to the government itself through the channels of party passion." G. Washington, *Farewell Address*, reprinted in *Documents of American History*, 169, 172 (H. Commager ed. 1946).

6. In the first half of the twentieth century, Congress became particularly concerned about corruption arising from contributions to candidate campaigns and political parties. In 1907, it passed the Tillman Act, providing "'[t]hat it shall be unlawful for any national bank, or any corporation organized by authority of any laws of Congress, to make a money contribution in connection with any election to any political office.'" *United States v. Int'l Union United Auto., Aircraft & Agr. Implement Workers of Am. (UAW-CIO)*, 352 U.S. 567, 575 (1957) (quoting 34 Stat. 864 (1907)) ("*UAW*"). That legislation declared that "'[i]t shall also be unlawful for any corporation whatever to make a money contribution in connection with any election at which Presidential and Vice-Presidential electors or a Representative in Congress is to be voted for or any election by any State legislature of a United States Senator.'" *Id.* (quoting 34 Stat. 864).

7. The Tillman Act "was merely the first concrete manifestation of a continuing congressional concern for elections free from the power of money." *UAW*, 352 U.S. at 575 (internal quotation marks omitted). Congress soon enacted amendments requiring disclosures of "committees operating to influence the results of congressional elections in two or more States" and "persons who spent more than $50 annually for the purpose of influencing congressional elections in more than one State." *Id.* at 575-76 (citing 36 Stat. 822). "The amendment also

placed maximum limits on the amounts that congressional candidates could spend in seeking nomination and election, and forbade them from promising employment for the purpose of obtaining support." *Id.* at 576 (citing 37 Stat. 25). In 1925, Congress passed FECA's precursor, the Federal Corrupt Practices Act of 1925, 43 Stat. 1070. One senator explained that "'[w]e all know . . . that one of the great political evils of the time is the apparent hold on political parties which business interests and certain organizations seek and sometimes obtain by reason of liberal campaign contributions,'" adding that that such "'large contributions'" lead to "'consideration by the beneficiaries . . . which not infrequently is harmful to the general public interest.'" *UAW*, 352 U.S. at 576 (quoting 65 Cong. Rec. 9507-08 (statement of Sen. Robinson)).

8. In 1939, Senator Carl Hatch introduced, and Congress passed, S. 1871, officially titled "An Act to Prevent Pernicious Political Activities" and commonly referred to as the Hatch Act. S. Rep. 101-165 at *18; *U.S. Civil Serv. Comm'n v. Nat'l Ass'n of Letter Carriers*, 413 U.S. 548, 560 (1973); 84 Cong. Rec. 9597-9600 (1939). Certification Order ¶ 86, *RNC v. FEC*, No. 14-853 (D.D.C. Sept. 22, 2014) (Docket No. 36) ("*RNC* Certification Order") (FEC Exh. 5).[1]

9. Congress established individual contribution limits in the 1940 amendments to the Hatch Act, Pub. L. No. 76-753, 54 Stat. 767 (1940). That legislation prohibited "any person, directly or indirectly" from making "contributions in an aggregate amount in excess of $5,000, during any calendar year" to any candidate for federal office, to any committee "advocating" the election of such a candidate, or to any national political party. *Id.* § 13(a), 54 Stat. 770. The limit, however, did not affect the ability of donors to continue making unlimited contributions to

[1] Plaintiffs have admitted the admissibility of the paragraphs from the Certification Order cited in this statement. (LAGOP's Disc. Responses at 22 (RFA #25) (admitting same) (FEC Exh. 1); JPGOP's Disc. Responses at 12 (RFA #24) (admitting same) (FEC Exh. 2); OPGOP's Disc. Responses at 12-13 (RFA #25) (admitting same) (FEC Exh. 3).)

state and local parties. *See* 86 Cong. Rec. 2852-2853 (1940) (amending bill to exempt state and local parties from contribution limit). *RNC* Certification Order ¶ 87.

10. The limit was sponsored by Senator John H. Bankhead, who expressed his hope that it would help "bring about clean politics and clean elections": "We all know that large contributions to political campaigns . . . put the political party under obligation to the large contributors, who demand pay in the way of legislation . . . ." 86 Cong. Rec. 2720 (1940) (statement of Senator Bankhead); *see also* 84 Cong. Rec. 9616 (daily ed. July 20, 1939) (statement of Rep. Ramspeck) (stating that what "is going to destroy this Nation, if it is destroyed, is political corruption, based upon traffic in jobs and in contracts, by political parties and factions in power").

11. The House debates were animated in part by the notorious "Democratic campaign book" scandal, in which federal contractors were forced to buy books at hyper-inflated prices from the Democratic party to assure that they would continue to receive government business. 84 Cong. Rec. 9598-99 (1939) (statement of Rep. Taylor); *Wagner v. FEC*, 793 F.3d 1, 11-12 (D.C. Cir. 2015) (en banc) ("Congressman J. Will Taylor pointed to the coercion of contractors in the celebrated Democratic campaign book scandal as a prime example of political immorality and skullduggery that should not be tolerated. 84 Cong. Rec. 9598-99 (1939). Representative Taylor recounted that, at the behest of the Democratic National Committee, party representatives paid visits to government contractors, reminding each one of the business he had received from the Government and explaining that the contractor was expected to buy a number of the party's souvenir convention books — at $250 each — in proportion to the amount of Government business he had enjoyed." (internal quotation marks omitted)), *petition for cert. denied sub nom. Miller v. FEC*, No. 15-428, 2016 WL 207263 (2016).

12. From the start, the 1940 individual contribution limit was "ineffective." Robert E. Mutch, *Campaigns, Congress, and Courts: The Making of Federal Campaign Finance Law* 66 (Praeger 1988). Individuals circumvented the $5,000 limit by routing additional contributions through other committees supporting the same candidate, *see* Louise Overacker, *Presidential Campaign Funds* 36 (Boston University Press 1946), and the Hatch Act amendments allowed donors to make unlimited contributions to state and local parties, *see* 86 Cong. Rec. 2852-53 (1940) (amending bill to exempt state and local parties from contribution limit). Indeed, after the law was passed, the general counsel of the Republican National Committee ("RNC") asked contributors to do just that: "It is therefore our advice that donors desiring to give more than $5,000 . . . should give only one gift of $5,000 . . . . Amounts above $5,000 that a donor desires to give should be given to State or local committees." *Fletcher's Opinion on the Application of Hatch Act*, N.Y. Times, Aug. 4, 1940, at 2 (FEC Exh. 4).

13. In the elections that followed, contributors used these techniques to make five- and six-figure contributions to both parties. *E.g.*, Overacker at 42-43 (summarizing spending in the 1944 elections); Herbert E. Alexander, *Financing Politics: Money, Elections and Political Reform* 86 (Congressional Quarterly Press 1976) (listing the number of individuals who contributed $10,000 or more in each election cycle from 1952 through 1972); *see also* David W. Adamany & George E. Agree, *Political Money: A Strategy for Campaign Financing in America* 45 (Johns Hopkins University Press 1975) (twenty-one members of a single family contributed more than $1.8 million in the 1968 elections, an average of more than $85,000 each).

B. Watergate Era Corruption and Congress's Reforms in FECA

14. By 1971, when Congress began debating the initial enactment of FECA, the $5,000 individual contribution limit was being "routinely circumvented." 117 Cong. Rec. 43,410 (1971) (statement of Rep. Abzug).

15. In 1974, shortly after the Watergate scandal, Congress substantially revised FECA. These amendments established new contribution limits, including a $1,000 base limit on contributions to candidates and an aggregate limit on how much an individual could contribute to all federal candidates and political committees during a two-year election cycle. Fed. Election Campaign Act Amendments of 1974, Pub. L. No. 93-443 § 101(b)(3), 88 Stat. 1263. In *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam), the Supreme Court upheld FECA's contribution limits on the basis that they furthered the government's important interest in preventing corruption and the appearance of corruption. *Id.* at 23-38.

16. The *Buckley* Court itself noted the "deeply disturbing examples surfacing after the 1972 election" of "large contributions . . . given to secure a political quid pro quo from current and potential office holders." 424 U.S. at 26-27 & n.28.

17. For example, in the 1970s, Republican party committees participated in funneling money from the dairy industry to President Richard Nixon's reelection campaign. The dairy industry had divided $2 million in support for President Nixon into contributions made to a number of committees in different states. *Buckley v. Valeo*, 519 F.2d 821, 839 n.36 (D.C. Cir. 1975) (per curiam), *aff'd in part, rev'd in part*, 424 U.S. 1 (1976) (per curiam); Final Report of the Select Committee on Presidential Campaign Activities, S. Rep. No. 93-981, 93d Cong., 2d Sess. at 615 & n.44 (1974) ("Final Report"). Republican party committees, including the RNC, were involved in funneling the contributions to the reelection campaign. Final Report at 736-42;

id. at 738 ("[W]ithin th[e] 2-week period just before and after the [1972] election, the two [Republican] congressional committees received $352,500 from [the dairy industry's political fund] and transferred $221,000 to RNC committees, which, in turn, forwarded $200,000 to [the Finance Committee to Re-Elect the President]."). In return for the dairy industry's contribution, President Nixon "reversed the decision . . . the Agriculture Department" had made just two weeks earlier not to increase milk price supports, "circumvent[ing]" that department's "legitimate functions." *Id.* at 1209. President Nixon's Secretary of Agriculture estimated that the decision would cost the public "'about $100 million.'" Richard Reeves, *President Nixon: Alone in the White House* 309 (Simon & Schuster 2001). The industry's contribution also led Attorney General John Mitchell — who at that time "doubled" as President Nixon's reelection campaign manager — to instruct that a grand jury investigation of the industry's associations be ended. Final Report at 1184, 1205.

18. During the 1972 presidential campaign, President Nixon's personal attorney and a principle fundraiser, Herbert Kalmbach, described the price-point for ambassadorships, relaying that "[a]nybody who wants to be an ambassador must give at least $250,000." Reeves at 462. This amount would be equal to over $1.4 million in 2016 dollars. *CPI Inflation Calculator*, Bureau of Labor Statistics, http://data.bls.gov/cgi-bin/cpicalc.pl (last visited Mar. 4, 2016); *compare infra* ¶ 131.

19. On February 25, 1974, Herbert Kalmbach pled guilty to violating 18 U.S.C. § 600 by promising a more "prestigious" ambassadorship to an individual, J. Fife Symington, in return for "a $100,000 contribution to be split between" various third parties — "1970 senatorial candidates designated by the White House" — "and [President] Nixon's 1972 campaign." *Buckley*, 519 F.2d at 840 n.38; Final Report at 492; *see also id.* at 501 ("De Roulet agreed to split

his $100,000 contribution between the 1970 Senate races and Mr. Nixon's 1972 campaign — as Symington had done."); *id.* at 493-494 (listing individuals who contributed to President Nixon's campaign and became or sought to become ambassadors, some of whom gave hundreds of thousands of dollars).

20. In 1976, after *Buckley*, Congress amended FECA's contribution limits to establish a specific, annual limit of $5,000 on individual contributions to certain "other" political committees, including state and local party committees. Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, § 112, 90 Stat. 486-87 (now codified at 52 U.S.C. § 30116(a)(1)(D)).

C. Soft Money Era Corruption and Congress's Response in BCRA

21. Following the enactment of this contribution limit and others, "certain corporations, labor unions, and wealthy individuals sought to bypass these contribution limits by making so-called 'soft money' contributions to political parties." *Rufer v. FEC*, 64 F. Supp. 3d 195, 199 (D.D.C. 2014); Mem. Op. at 1 (Docket No. 24) ("Mem. Op."). The national parties used unlimited soft money donations, together with a proportion of "hard money" raised pursuant to FECA's source and amount limits, for "mixed" activities purportedly affecting both federal and state elections, including advertising that "did not expressly advocate the election or defeat of a federal candidate" but was in fact primarily designed to affect federal elections. *Republican Nat'l Comm. v. FEC*, 698 F. Supp. 2d 150, 153 (D.D.C. 2010) ("*RNC*"), *aff'd*, 561 U.S. 1040 (2010); *see also Rufer*, 64 F. Supp. 3d at 199 (explaining that soft money contributions were "ostensibly earmarked for state and local elections or 'issue advertising' and thus not subject to the same FECA requirements as contributions explicitly intended to influence federal elections").

22. In 1998, after an extensive investigation, the Senate Committee on Governmental Affairs issued a report detailing the influence that soft money had come to wield in the electoral and legislative processes. *McConnell v. FEC*, 540 U.S. 93, 129 (2003), *overruled in part by Citizens United v. FEC*, 558 U.S. 310 (2010); S. Rep. No. 105-167 (1998).

23. The six-volume, 9,500-page report concluded that the parties' ability to solicit and spend soft money had completely undercut FECA's source-and-amount limitations. *See McConnell*, 540 U.S. at 129-32. The report explained that national, state, and local committees had played a crucial role in the soft-money system: the national parties had made a practice of transferring funds to the state and local parties to conduct putatively non-federal activities "'that in fact ultimately benefit[ed] federal candidates.'" *Id*. at 131 (quoting S. Rep. 105-167 at 4466).

24. "Congress responded to this circumvention of FECA's contribution limits in 2002 with the enactment of BCRA, a sweeping series of amendments to FECA which, among other things, limited soft money contributions to political parties." *Rufer*, 64 F. Supp. 3d at 199 (citing *McConnell*, 540 U.S. at 122-26, 132); *McConnell*, 540 U.S. at 126, 133 (BCRA was enacted in part to plug the "soft-money loophole" that had "enabled parties and candidates to circumvent . . . limitations on the source and amount of contributions [made] in connection with federal elections"). "Rather than specifically defining and prohibiting soft money contributions, BCRA imposed a general ban on collecting funds in excess of FECA's base contribution ceilings for certain entities involved in federal elections." *Rufer*, 64 F. Supp. 3d at 199.

25. BCRA also adjusted FECA's base limits, including by doubling the limit for individual contributions to state and local committees from $5,000 to $10,000. *Rufer*, 64 F. Supp. 3d at 199; BCRA § 102(3). Congress increased these limits in order to compensate the political parties for some of the funds they were expected to lose as a result of the soft money

ban. 148 Cong. Rec. S2153 (daily ed. Mar. 20, 2002) (statement of Sen. Feinstein) ("The soft money ban will work because we came to a reasonable compromise with regard to raising some of the existing hard money contribution limits by modest amounts . . . ."); 147 Cong. Rec. S2964 (daily ed. Mar. 27, 2001) (statement of Sen. Nickles) ("If we are going to ban soft money, we should allow some increases in hard money."). The $10,000 contribution limit for contributions to state and local committees remains the limit today. 52 U.S.C. § 30116(a)(1)(D).

26. The limit is shared between a state party and "affiliated" local committees, but local committees of a given political party may receive separate contributions of up to $5,000 per year from individuals if the committee's fundraising is generally separate from — and thus the committee is not "affiliated" with — the state committee of their political party. *See, e.g.*, FEC Advisory Op. 2005-02 (Corzine), at 6-7 & n.3, http://saos.fec.gov/aodocs/2005-02.pdf.

27. BCRA Title I added a new section to FECA — titled "Soft Money of Political Parties," BCRA § 101(a), now codified as 52 U.S.C. § 30125 — that distinguishes between "[n]ational committees" and "[s]tate, district and local committees." Subsection (a) establishes that national committees may no longer accept any soft money for any purpose. 52 U.S.C. § 30125(a). Subsection (b) provides that state, district, and local committees are likewise generally barred from using any soft money for "Federal election activity." *Id.* § 30125(b)(1). And subsection (c) bars national, state, district, and local committees from using soft money to pay for fundraising costs for "Federal election activity." *Id.* § 30125(c).

28. "Federal election activity" ("FEA") is a term Congress added in BCRA. 52 U.S.C. § 30101(20) (defining FEA); BCRA § 101(b). FEA includes four distinct categories of election activity: (1) voter registration activity during the 120 days preceding a regularly scheduled federal election; (2) voter identification, get-out-the-vote, and generic campaign

activity that is "conducted in connection with an election in which a candidate for Federal office appears on the ballot"; (3) any "public communication" that "refers to a clearly identified candidate for Federal office" and "promotes," "supports," "attacks," or "opposes" a candidate for that office (the four verbs "promotes," "supports," "attacks," or "opposes" are sometimes known by the shorthand "PASO"); and (4) the services provided by a state, district, or local committee employee who dedicates more than 25% of his or her time in a month to "activities in connection with a Federal election." 52 U.S.C. § 30101(20)(A)(i)-(iv).

29. BCRA also required that state and local committees report their FEA above a $5,000 annual threshold. 52 U.S.C. § 30104(e)(2); BCRA § 103(a). "In addition to any other reporting requirements applicable under this Act, a political committee . . . to which section 30125(b)(1) of this title applies[,] shall report all receipts and disbursements made for" FEA "unless the aggregate amount of such receipts and disbursements during the calendar year is less than $5,000." 52 U.S.C. § 30104(e)(2)(A). The provision also requires state and local committees to disclose "certain nonfederal amounts permitted to be spent on" FEA if they exceed that spending threshold, including "receipts and disbursements described in section 30125(b)(2)(A) and (B) of this title." *Id.* § 30104(e)(2)(B).

30. These "nonfederal amounts," also known as "Levin funds" after the sponsor of the relevant amendment, are an exception to the general rule that FEA by state and local party committees must be paid for entirely with funds subject to the Act's source and amount restrictions. 52 U.S.C. § 30125(b)(2); BCRA § 101(a). "[T]he Levin Amendment allows state and local party committees to pay for certain types of [FEA] with an allocated ratio of hard money and 'Levin funds' — that is, funds raised within an annual limit of $10,000 per person." *McConnell*, 540 U.S. at 162-63 (citing 52 U.S.C. § 30125(b)(2)); 52 U.S.C. § 30125(b)(2)(B)(iii)

(setting a $10,000 per "person" per year limit). The $10,000 Levin funds limit is separate from FECA's $10,000 limit on contributions from individuals to state and local committees, and it is reduced if state law establishes a lower limit. 11 C.F.R. § 300.31(d). Apart from the "$10,000 cap and certain related restrictions to prevent circumvention of that limit, § [30125](b)(2) leaves regulation of such contributions to the States"; thus, persons such as corporations and unions that cannot contribute under federal law can give Levin funds. *McConnell*, 540 U.S. at 163; *see also* 52 U.S.C. § 30125(b)(2)(C) (barring involvement of national parties and others in joint activities to raise Levin funds by "2 or more State, local, or district committees of any political party").

31. Levin funds may only be used to fund certain activities within the first two categories of FEA: (1) voter registration activity before a federal election, and (2) voter identification, get-out-the-vote, and certain generic campaign activity. 52 U.S.C. § 30125(b)(2)(A). Levin funds cannot be used to pay for any activities that refer to "a clearly identified candidate for Federal office," even if the candidate is not promoted, supported, attacked, or opposed. *Id.* § 30125(b)(2)(B)(i). Levin funds also "cannot be used to fund broadcast communications unless they refer 'solely to a clearly identified candidate for State or local office.'" *McConnell*, 540 U.S. at 163 (quoting 52 U.S.C. § 30125(b)(2)(B)(ii)). Finally, "both the Levin funds and the allocated portion of hard money used to pay for such activities must be raised entirely by the state or local committee that spends them." *Id.*; 52 U.S.C. § 30125(b)(2)(B)(iv); *McConnell v. FEC*, 251 F. Supp. 2d 176, 210 (D.D.C. 2003) (per curiam) (describing this "homegrown" rule).

32. The FEC's guidebook *Political Party Committees* (Aug. 2013), http://www.fec.gov/pdf/partygui.pdf, provides a summary of how Levin funds may be raised, spent, and allocated. *Id.* at 57-58 (raising and spending); *id.* at 116-17 (allocation).

33. According to FEC records, since December 1, 2002, many state and local party committees registered with the Commission have filed a Schedule L, which aggregates receipts and disbursements of Levin funds, with total receipts or total disbursements greater than $0, including:

1. A HIGHER VOICE
2. ALABAMA REPUBLICAN PARTY
3. ALAMEDA COUNTY REPUBLICAN PARTY (FED)
4. ALASKA DEMOCRATIC PARTY
5. ARIZONA REPUBLICAN PARTY
6. ARIZONA STATE DEMOCRATIC CENTRAL EXECUTIVE COMMITTEE
7. BUTTE COUNTY REPUBLICAN PARTY (FED. ACCOUNT)
8. CALIFORNIA DEMOCRATIC PARTY
9. CALIFORNIA REPUBLICAN PARTY FEDERAL ACCT
10. CONNECTICUT DEMOCRATIC STATE CENTRAL COMMITTEE
11. CONTRA COSTA REPUBLICAN PARTY (FED)
12. DALLAS COUNTY DEMOCRATIC PARTY
13. DALLAS COUNTY DEMOCRATIC PARTY
14. DALLAS COUNTY REPUBLICAN PARTY – PRIMARY
15. DAVIDSON COUNTY DEMOCRATIC EXECUTIVE COMMITTEE
16. DEMOCRATIC EXECUTIVE COMMITTEE OF FLORIDA
17. DEMOCRATIC PARTY OF ARKANSAS
18. DEMOCRATIC PARTY OF ILLINOIS
19. DEMOCRATIC PARTY OF NEW MEXICO
20. DEMOCRATIC PARTY OF ORANGE COUNTY FED PAC
21. DEMOCRATIC PARTY OF OREGON
22. DEMOCRATIC PARTY OF SANTA CRUZ COUNTY
23. DEMOCRATIC PARTY OF SOUTH CAROLINA
24. DEMOCRATIC PARTY OF VIRGINIA
25. DEMOCRATIC STATE CENTRAL COMMITTEE OF MARYLAND
26. DEMOCRATIC STATE COMMITTEE (DELAWARE)
27. FAIRFAX COUNTY REPUBLICAN COMMITTEE (FEDERAL)
28. GALVESTON COUNTY DEMOCRATIC PARTY
29. GEORGIA FEDERAL ELECTIONS COMMITTEE
30. GEORGIA REPUBLICAN PARTY, INC.
31. HARRIS COUNTY DEMOCRATIC PARTY
32. HARRIS COUNTY REPUBLICAN PARTY FEDERAL COMMITTEE
33. HAWAII DEMOCRATIC PARTY
34. IDAHO REPUBLICAN PARTY
35. IDAHO STATE DEMOCRATIC PARTY
36. ILLINOIS REPUBLICAN PARTY
37. IOWA DEMOCRATIC PARTY

38. JEFFERSON COUNTY DEMOCRATIC PARTY
39. KANSAS DEMOCRATIC PARTY
40. KERN COUNTY REPUBLICAN CENTRAL COMMITTEE (FED)
41. LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE
42. MAINE DEMOCRATIC STATE COMMITTEE
43. MARIN COUNTY REPUBLICAN CENTRAL COMMITTEE (FEDERAL)
44. MICHIGAN DEMOCRATIC STATE CENTRAL COMMITTEE
45. MICHIGAN REPUBLICAN PARTY
46. MINNESOTA DEMOCRATIC-FARMER-LABOR PARTY
47. MISSOURI DEMOCRATIC STATE COMMITTEE
48. MONTANA DEMOCRATIC PARTY
49. MONTEREY COUNTY DEMOCRATIC CENTRAL COMMITTEE FEDERAL
50. NEBRASKA DEMOCRATIC PARTY
51. NEVADA REPUBLICAN CENTRAL COMMITTEE
52. NEVADA STATE DEMOCRATIC PARTY
53. NEW HAMPSHIRE DEMOCRATIC PARTY
54. NEW JERSEY REPUBLICAN STATE COMMITTEE
55. NEW YORK STATE DEMOCRATIC COMMITTEE
56. NORTH DAKOTA DEMOCRATIC-NONPARTISAN LEAGUE PARTY
57. OHIO DEMOCRATIC PARTY
58. OHIO REPUBLICAN PARTY STATE CENTRAL & EXECUTIVE COMMITTEE
59. OKLAHOMA DEMOCRATIC PARTY
60. OKLAHOMA LEADERSHIP COUNCIL
61. OREGON REPUBLICAN PARTY
62. PENNSYLVANIA DEMOCRATIC PARTY
63. PLACER COUNTY REPUBLICAN CENTRAL COMMITTEE (FED)
64. REPUBLICAN CAMPAIGN COMMITTEE OF NEW MEXICO
65. REPUBLICAN CENTRAL COMMITTEE OF LA COUNTY (FED)
66. REPUBLICAN CENTRAL COMMITTEE OF SAN LUIS OBISPO COUNTY-FEDERAL
67. REPUBLICAN FEDERAL COMMITTEE OF PENNSYLVANIA
68. REPUBLICAN PARTY OF LA COUNTY - 66TH AD (FEDERAL)
69. REPUBLICAN PARTY OF ORANGE COUNTY (FEDERAL)
70. REPUBLICAN PARTY OF SACRAMENTO COUNTY (FED. ACCT.)
71. REPUBLICAN PARTY OF SAN DIEGO COUNTY
72. REPUBLICAN PARTY OF TEXAS
73. RHODE ISLAND DEMOCRATIC STATE COMMITTEE
74. RICO DEMOCRATIC GOTV
75. RIVERSIDE REPUBLICAN CENTRAL COMMITTEE
76. ROCK ISLAND COUNTY DEMOCRATIC CENTRAL COMMITTEE
77. SACRAMENTO COUNTY DEMOCRATIC CENTRAL COMMITTEE: UNITED CAMPAIGN COMMITTEE-FEDERAL

78. SAN BERNARDINO COUNTY REPUBLICAN CENTRAL COMMITTEE-FEDERAL
79. SAN DIEGO COUNTY DEMOCRATIC PARTY (FED. ACCT.)
80. SAN JOAQUIN COUNTY REPUBLICAN CENTRAL COMMITTEE (FED. ACCOUNT)
81. SANTA CLARA COUNTY REPUBLICAN PARTY(FED)
82. SANTA CLARA COUNTY UNITED DEMOCRATIC CAMPAIGN
83. SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE SCDCC
84. SONOMA COUNTY REPUBLICAN CENTRAL COMMITTEE (FEDERAL)
85. STANISLAUS REPUBLICAN CENTRAL COMMITTEE (FED)
86. STATE DEMOCRATIC EXECUTIVE COMMITTEE OF ALABAMA
87. TENNESSEE DEMOCRATIC PARTY
88. TENNESSEE REPUBLICAN PARTY FEDERAL ELECTION ACCOUNT
89. TEXAS DEMOCRATIC PARTY
90. THE REPUBLICAN PARTY OF FORT BEND COUNTY FEDERAL COMMITTEE
91. TRAVIS COUNTY DEMOCRATIC PARTY
92. TULARE COUNTY REPUBLICAN CENTRAL COMMITTEE (FEDERAL)
93. UTAH REPUBLICAN PARTY
94. UTAH STATE DEMOCRATIC COMMITTEE
95. VENTURA COUNTY REPUBLICAN PARTY (FED.)
96. WASHINGTON STATE DEMOCRATIC CENTRAL COMMITTEE
97. WASHINGTON STATE REPUBLICAN PARTY
98. WORKING FAMILIES PARTY OF OREGON
99. YOLO COUNTY DEMOCRATIC CENTRAL COMMITTEE – FEDERAL ACCOUNT

(FEC's Reply in Support of Its Mot. for Protective Order and to Quash Dep., Exh. 8 at 37-40 (Docket No. 36-3).)

D. Other Regulation of Political Party Committees

34. Political parties, unlike all other entities, have long been permitted under FECA to coordinate spending with candidates well above the Act's contribution limits. 52 U.S.C. §§ 30116(d)(2)-(3). The Act currently allows national and state party committees each to coordinate spending with a candidate up to $46,800 or $96,100 in races for the House of Representatives (depending on whether the state has only one or multiple districts), and up to a

range of $96,100 to $2,886,500 in races for the Senate (depending on the state's voting age population). *Id.*; FEC, *Price Index Adjustments for Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, 81 Fed. Reg. 7101-03 (Feb. 10, 2016).

35. Since 1979, Congress has permitted state and local party committees to spend unlimited amounts for certain activities — called exempt party activities — that benefit federal candidates, including slate cards, sample ballots, campaign materials distributed by volunteers, and voter drives for presidential nominees. Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, § 101, 93 Stat. 1340-44. Congress defined these activities to be exemptions from the definitions of "contribution" and "expenditure," thereby permitting coordination between state and local committees and federal candidates on them. 52 U.S.C. § 30101(8)(B)(v), (9)(B)(iv) (slate card/sample ballot); *id.* § 30101(8)(B)(ix), (9)(B)(viii) (campaign materials); *id.* § 30101(8)(B)(xi), (9)(B)(ix) (voter drives); 11 C.F.R. §§ 100.80, 100.87, 100.89, 100.140, 100.147, 100.149; 11 C.F.R. § 109.37(b) (referencing exemptions in 11 C.F.R. part 100).

36. There are no limits on the amounts that political parties can spend to make independent expenditures. *Colo. Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 617 (1996). An "[i]ndependent expenditure" is defined under the Act as an expenditure "(A) expressly advocating the election or defeat of a clearly identified candidate; and (B) that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents." 52 U.S.C. § 30101(17).

III. PLAINTIFFS' CLAIMS AND ACTIVITIES

A. Plaintiffs' Challenges

37. LAGOP, JPGOP, and OPGOP seek declaratory and injunctive relief against three provisions of FECA: (1) the requirement that state and local parties must generally fund FEA with money raised subject to FECA's source and amount restrictions, 52 U.S.C. § 30125(b)(1); (2) the requirement that funds used to raise money for FEA themselves be raised in accord with FECA's source and amount restrictions, *id.* § 30125(c); and (3) the requirement that state and local committees report their FEA, *id.* § 30104(e)(2). (Compl. Prayer for Relief ¶¶ 3-10.)

38. Plaintiffs' causes of action seek varying amounts of relief, but all contain certain qualifications. Count I asks that the three challenged provisions be invalidated as applied to "independent, non-individualized communications that exhort registering/voting" and to such communications made "by Internet." (Compl. ¶¶ 117-29 (emphases removed).) Count III asks that the provisions be invalidated as applied to all "independent" FEA. (*Id.* ¶¶ 139-49 (emphasis removed).) Count IV asks that they be invalidated facially. (*Id.* ¶¶ 150-52.) Counts I, III, and IV are brought on behalf of all plaintiffs. Count II is brought on behalf of LAGOP only. It challenges the three provisions as applied to certain proposed FEA by LAGOP. (*Id.* ¶ 131.) It alternatively challenges only sections 30125(b)(1) and 30125(c) as applied to the proposed creation of an "independent-communications-only account," which allegedly would "contain only contributions from individuals" to LAGOP "that are legal under state law and applicable federal law (other than the challenged provisions)." (*Id.* ¶ 132 (emphasis removed).) This account would allegedly be similar to "the non-contribution accounts . . . of nonconnected committees," which such committees have used to finance independent expenditures following *Citizens United* and other decisions. (*Id.* ¶ 137.) Count II's alternative request does not

challenge section 30104(e)(2)'s reporting requirement. All four counts are based on plaintiffs' claim that their planned activities raise no "cognizable" quid-pro-quo corruption risk. (*Id.* ¶¶ 121, 123, 134-35, 145, 151.)

39. Plaintiffs' claims focus on individual donors as the only source of funds at issue. Plaintiffs have stated that this case is about "the right of state and local committees to make independent communications . . . with . . . contributions, *from individuals*, that they have and routinely raise." (Pls.' Reply Mem. Supporting Mot. to Expedite at 1 (Docket No. 18) (emphasis added); *see* Compl. ¶ 137 (explaining that plaintiffs' proposed account would "only solicit contributions from individuals," not corporations or unions).) Plaintiffs have repeatedly indicated that they will comply with a long list of other FECA contribution prohibitions. (Compl. ¶ 107; Pls.' Mot. for Summ. J. at 13 (Docket No. 33) ("Pls.' Mem."); Pls.' Statement of Material Facts Not in Genuine Dispute at 29 ¶ 66 (Docket No. 33).).

40. Plaintiffs have also said that all funds they raise will be "compliant with state law," including Louisiana's $100,000 four-year limit on individual contributions. (Compl. ¶ 108; *see also id.* ¶ 109 (describing limit).)

41. Plaintiffs seek only to "be able to use nonfederal funds to pay for an *allocated* amount of their activities under the existing allocation rules" applicable to state and local party activity that is not FEA. (*Id.* ¶ 137.)

42. Notwithstanding these representations, plaintiffs have elsewhere stated that they wish to spend corporate contributions on FEA, that they believe no contribution restrictions (including Louisiana's) should restrict their actions, and that they do not wish to use only a portion of nonfederal funds on FEA but to wholly fund such activities with nonfederal funds. (LAGOP's Disc. Responses at 14-15 (Interrogatory #3); JPGOP's Disc. Responses at 24-25

(Interrogatory #3); OPGOP's Disc. Responses at 14-15 (Interrogatory #3); JPGOP 30(b)(6) Dep. at 61:19-25 ("Q . . . . Is there any limit that [JPGOP] believes it should apply to money it takes in for use in support of federal candidates? A. No. Q. It's [JPGOP's] view that should be unlimited? A. Yes.") (FEC Exh. 11); Reply Mem. Supporting Appl. for Three-Judge Ct. at 20 (Docket No. 16) ("But if FEC does *not* reimpose its allocation scheme, state and local committees could pay for the activities at issue *entirely* with nonfederal funds, which would be fine.").)

43. Plaintiffs acknowledge that use of Levin funds would permit them to pay for an allocated portion of their desired activities with nonfederal funds. But they assert that they "do not use [Levin funds] due to complexity, burdens, and restrictions." (Compl. ¶ 15 n.4.)

44. In describing their proposed activities (*id.* ¶¶ 74-111), plaintiffs appear ultimately to concede that these activities mostly meet the definition of FEA, despite some equivocation (*e.g.*, *id.* ¶ 104 (asserting that advertisement mentioning Hillary Clinton delivered through certain mediums may not meet the criteria for "federal election activity")). Finally, although plaintiffs allege that they intend to comply with just about every other applicable federal and state contribution restriction (*id.* ¶¶ 107-09; Pls.' Mem. at 13), absent from the list is FECA's annual $10,000 limit for individual contributions to state and local committees, 52 U.S.C. § 30116(a)(1)(D).

B. Republican National, State, and Local Parties' Operations and Activities

45. The members of the RNC consist of three individuals from each state and territorial Republican Party. *The Rules of the Republican Party* at Rule No. 1. If a Republican is elected President, that President is typically responsible for choosing the chairman of the RNC. *RNC* Certification Order ¶ 28.

46. The RNC is one of the three Republican national political committees. The other two are the National Republican Congressional Committee ("NRCC") and the National Republican Senatorial Committee ("NRSC"). Each of these three Republican party committees can receive unlimited amounts as transfers from the other national Republican party committees. 52 U.S.C. § 30116(a)(4). *RNC* Certification Order ¶ 31.

47. The NRSC is directly governed by Republican U.S. Senators. The NRCC is directly governed by Republican U.S. House members. *RNC* Certification Order ¶ 32.

48. "In practice, electing . . . candidates is the RNC's primary focus." *McConnell v. FEC*, 251 F. Supp. 2d 176, 470 (D.D.C. 2003) (Kollar-Kotelly, J.) (procedural history omitted). As Republican Senator John McCain has testified, "[t]he entire function and history of political parties in our system is to get their candidates elected, and that is particularly true after the primary campaign has ended and the party's candidate has been selected." *Cao v. FEC*, 688 F. Supp. 2d 498, 507 (E.D. La. 2010), *aff'd sub nom In re Cao*, 619 F.3d 410 (5th Cir. 2010) (citing Senator McCain's declaration in *McConnell*). As former RNC Chairman Haley Barbour explained in 1996, "[t]he purpose of a political party is to elect its candidates to public office, and [the Republican Party's] first goal [that year wa]s to elect Bob Dole president. . . . Electing Dole [wa]s [the party's] highest priority, but it [wa]s not (the party's) only priority. [The party's] goal [wa]s to increase [its] majorities in both houses of Congress and among governors and state legislatures." *Cao*, 688 F. Supp. 2d at 507 (citing documentary evidence from *McConnell*). *RNC* Certification Order ¶ 33.

49. "One historic role that parties have played is to continue to operate between elections so that each new candidate campaign need not start from scratch. Parties have historically been considered socializing institutions that help bring citizens into the political

system, serve as an outlet for their political energy by recruiting them to work in campaigns, and help mobilize voters." *Cao* Findings ¶ 77 (internal quotation marks omitted). *RNC* Certification Order ¶ 66.

50. National parties such as the RNC "directly assist federal candidates by providing them with campaign contributions, coordinated expenditures, and assistance in areas of campaigning that require expertise and in-depth research." *Cao*, 688 F. Supp. 2d at 519-20 (citing RNC discovery responses in *McConnell*). The RNC assists general election candidates with their campaigns, political expertise, media and other election services, volunteers, and other resources that are needed to wage an election campaign. *Id.* The RNC helps candidates collect money and other campaign resources from interest groups and individuals who are active in politics. *Id.* *RNC* Certification Order ¶ 35.

51. The RNC works with federal candidates each election cycle to develop "victory plans," which are joint, comprehensive, election-specific strategies. *Cao*, 688 F. Supp. 2d at 523 (citing RNC 30(b)(6) deposition in that case). "The RNC has 'constant contact' with candidates at the height of an election." *Id.* at 519 (citing joint stipulation and RNC 30(b)(6) deposition in that case). "[T]he RNC has a continuous and ongoing relationship with its candidates . . . [t]he RNC has extensive discussions with its candidates about their needs, activities and strategy." *Id.* at 515 (citing RNC 30(b)(6) deposition in that case). *RNC* Certification Order ¶ 36.

52. The RNC encourages its candidates to tell donors who have already contributed the maximum amount to a candidate to make additional contributions to the RNC. *Cao*, 688 F. Supp. 2d at 526 (citing RNC 30(b)(6) deposition in that case). And Republican candidates do suggest to donors who have given the maximum amount to their campaign that they could also contribute to party committees such as the RNC or LAGOP. *Id.* at 523 (citing 30(b)(6)

deposition of LAGOP and deposition of then-Congressman Cao in that case). *RNC* Certification Order ¶ 37.

53. Unlike affiliation with regular political committees but like other parties, members of the Republican Party in Congress organize legislative caucuses, assign committee chairs and membership, and elect legislative leadership by party. Valerie Heitshusen, *Party Leaders in the House: Election, Duties, and Responsibilities*, Congressional Research Service (2014), http://fas.org/sgp/crs/misc/RS20881.pdf. *RNC* Certification Order ¶ 38.

54. Republican candidates are automatically included on the general election ballot in most states, and those candidates are identified on the ballot as Republicans. Republican primary elections are often run by the states. *RNC* Certification Order ¶ 39.

55. The relationship between the national parties and state and local parties, as explained by Jonathan Krasno, Associate Professor of Political Science at Binghamton University (SUNY), is as follows:

> The reality, as anyone familiar with the soft money era knows, is that state and local parties often operated at the direction of the national parties. For example, in our report in *Colorado Republican II*, Sorauf and I noted that the Colorado Republican Party's executive director was a resident of the District of Columbia who was recruited by the National Republican Senatorial Committee to head the Colorado party and who returned to his previous job following the election cycle. The national party provided the vast majority of the state party's funds which were used almost exclusively to support a Republican candidate for U.S. Senate (or, more accurately, to oppose the Democratic candidate). Any argument that the state and local parties are independent of their much larger, wealthier, and more powerful national counterparts ignores the history of American parties, especially in the last 40 years. My point is simple. Should the plaintiffs prevail here, their victory will bring the national party organizations back into the business of raising soft money by acting through compliant state and local party organizations. This is exactly what happened before and exactly what will happen again, except on a much larger scale.

Expert Report of Jonathan Krasno at 5 (Dec. 23, 2015) (FEC Exh. 6) ("Krasno"); *see also id.* at 6-7 (explaining that if the law at the time had "allowed only state parties to accept nonfederal funds for use in federal elections, the donors who got to stay in the Lincoln Bedroom or be interred at Arlington would have been simply directed to contribute to a state or local committee."); *id.* at 11 (noting "the long history of using state and local parties as conduits for money transferred or directed to them by the national committees for the nationals' initiatives").

56. LAGOP participates in electoral political activities at both the state and local levels. LAGOP supports both federal and state candidates. *Cao*, 688 F. Supp. 2d at 508 (citing joint stipulation and complaint from that case). The "basic role" of the LAGOP is "to elect Republican candidates to office." *Id.* at 527 (citing LAGOP 30(b)(6) deposition from that case); *see also id.* ("[C]ertainly we're concerned about issues, but our main emphasis is to run communication in support of electing our candidates."). *RNC* Certification Order ¶ 45.

57. LAGOP is governed by an executive committee, consisting of individuals serving on a voluntary basis. *Cao*, 688 F. Supp. 2d at 508 (citing joint stipulation and depositions from that case). *RNC* Certification Order ¶ 40.

58. Currently, LAGOP's Executive Director is Jason Dorè. (Dep. of Jason Dorè at 10:13-15 (Jan. 26, 2016) ("LAGOP 30(b)(6) Dep.") (FEC Exh. 7).) Its Chairman is Roger Villere, Jr., who has held that role for the last ten years. (Dep. of Roger Villere, Jr. at 7:10-11, 13:3-11 (Jan. 26, 2016) ("Villere Dep.") (FEC Exh. 8).)

59. The RNC and LAGOP are linked by overlapping membership — the "National Committeeman" and a "National Committeewoman" from the LAGOP are automatically members of the RNC. *Bylaws of the State Central Committee of the Republican Party of Louisiana* ("*LAGOP Bylaws*"), Art. V § 5,

http://static.squarespace.com/static/52951d96e4b0c34219642ca5/t/52cb2377e4b007f174087f79/1389044599564/BYLAWS-OF-THE-STATE-CENTRAL-COMMITTEE-OF-THE-REPUBLICAN-PARTY-OF-LOUISIANA.pdf. Republican federal officeholders from Louisiana, by virtue of their office, automatically hold the position of an "ex-officio, non-voting Member" of the State Central Committee of LAGOP during their time in office. *LAGOP Bylaws*, Art III § 2. *RNC* Certification Order ¶ 41.

60. LAGOP's Chairman, Mr. Villere, has also had "various positions with the RNC" for about 10 years. (Villere Dep. at 14:15-18.) Currently, he is also one of eight Vice Chairmen for the RNC. (*Id.* at 7:18-23.) His responsibility as an RNC Vice Chairman is for a "southern district" covering 14 states, and he is "a member of the executive committee, so [he is] there when they make decisions on executive committee." (*Id.* at 8:10-9:21.) As a Vice Chairman of the RNC, Mr. Villere has "more access to the leadership." (*Id.*; *see also id.* at 22:4-23:12 (discussing communications with senior RNC leadership such as Reince Preibus and Matt Parnell). Mr. Villere testified that his "dual roles" as Chairman of LAGOP and Vice Chairman of the RNC are "complementary, because the job is to elect [R]epublicans, whether in the State of Louisiana, in our southern region, or nationally. So that's the job of the Republican Party, is to build nationally a Republican Party and to locate [R]epublicans." (*Id.* at 11:8-24.)

61. In his capacity as LAGOP's Chairman, Mr. Villere works "to try and identify candidates that would run for office and try to elect candidates that are running for office." (Villere Dep. at 15:14-21.)

62. Mr. Villere and LAGOP assist candidates with fundraising — both in terms of "attempt[ing] to match the expressed preferences of donors with the office that a potential candidate is running for" (Villere Dep. at 19:14-18) and raising money for LAGOP (*id.* at 20:7-

17). LAGOP "help[s] candidates facilitate relationships with donors." (*Id.* at 40:11-20 ("We do it all the time."); *see also id.* at 17:11-21.)

63. Mr. Villere testified that donors have particular preferences, including with respect to issues they care about, and contribute to candidates who can take desired executive or legislative action. (Villere Dep. at 45:2-12, 46:8-19.)

64. LAGOP works very closely with the RNC. Josh Kivett, RNC's regional political director for states including Louisiana, communicates regularly with LAGOP's leadership about the "political landscape in the State of Louisiana, how fundraising is going for the State Party, how [the LAGOP] chairman is doing." (LAGOP 30(b)(6) Dep. at 43:23-44:25.) Mr. Kivett and LAGOP's leadership will talk a "[c]ouple times a week" when things are active and "[p]retty much daily" when things are really active. (*Id.* at 45:1-13.)

65. Other individuals at the RNC work "hand-in-hand" with LAGOP to "improve data" and make it available to candidates. (LAGOP 30(b)(6) Dep. at 46:11-47:16.) LAGOP primarily "feed[s] the data up" to the RNC. (*Id.*) LAGOP and the RNC also share donor data, for example, where LAGOP might give the RNC "500 names and in return we get 500 names." (*Id.* at 54:13-20.) The RNC and LAGOP will also share "vote goals" ("[h]ow many votes we need to win a certain race") and general campaign strategy so that the RNC can provide input. (*Id.* at 54:25-55:8, 55:17-25.) The RNC also facilitates at least three meetings per year for the executive directors of its state parties to come together and share "best-practices type[s] of thing[s]." (*Id.* at 56:5-57:6.)

66. During campaigns, the RNC and its personnel work as a "team" with LAGOP, with the RNC staff "often review[ing]" individual mailing pieces that LAGOP has prepared, "[p]rovid[ing] comments" and "[s]ign[ing] off" on them. (LAGOP 30(b)(6) Dep. at 52:7-22.)

67. The RNC and LAGOP are also linked financially — under FECA, they are permitted to transfer unlimited amounts of money to one another. 52 U.S.C. § 30116(a)(4). They are also permitted to assign their authority to make coordinated party expenditures on behalf of candidates to one another. 52 U.S.C. § 30116(d)(3); 11 C.F.R. § 109.33(a). *RNC* Certification Order ¶ 42.

68. Thus, LAGOP receives transfers "from RNC from time to time." (LAGOP 30(b)(6) Dep. at 27:2-4.) For example, LAGOP's Executive Director may tell the Chairman that "we really need X dollars for this race, we want to do a mail-out, or we want to do a phone bank, or we want to do radio." (Villere Dep. at 26:7-24.) Mr. Villere, the Chairman, will then "call RNC" to "see if there is any way they can help us with that. . . . So I'll call, and sometimes I'll ask, sometimes I'll beg. . . . You never get what you want. You get what they want to send you. But, . . . obviously — we've been very successful over the years win[n]ing elections. So, . . . they [RNC] have been helpful." (*Id.*; *see also* LAGOP 30(b)(6) Dep. at 54:5-12 (LAGOP "[c]ertainly" requests transfers from the RNC for use on FEA).)

69. LAGOP is in constant contact with the federal candidates in Louisiana during an election cycle for the purpose of "[g]etting them elected." *Cao*, 688 F. Supp. 2d at 527 (citing LAGOP 30(b)(6) deposition from that case). One of the purposes of state party committees like LAGOP is to assist in the election of candidates for federal office. *Id.* at 523 (citing LAGOP 30(b)(6) deposition from that case). In constructing a "victory plan," Republican federal candidates have meetings with both LAGOP and the RNC. *Id.* at 523 (citing RNC 30(b)(6) deposition from that case). *RNC* Certification Order ¶ 46.

70. Federal candidates and officeholders raise funds for both the RNC and LAGOP. *Cao*, 688 F. Supp. 2d at 523 (citing 30(b)(6) deposition of LAGOP in that case and evidence from *McConnell* record). *RNC* Certification Order ¶ 43.

71. LAGOP encourages federal candidates to tell their donors to also contribute to LAGOP. *Cao*, 688 F. Supp. 2d at 523 (citing 30(b)(6) deposition of LAGOP and deposition of then-Congressman Cao in that case). Donors who have contributed the maximum allowable contribution to an individual candidate are encouraged to contribute more to LAGOP. *Id.* Louisiana federal candidates and their volunteers are expected not only to raise money for their campaign, but also to raise money for LAGOP. *Id.* at 523 (citing 30(b)(6) deposition of LAGOP and deposition of then-Congressman Cao in that case). LAGOP and federal candidates share information with one another about contributors. *Id.* at 523 (citing 30(b)(6) deposition of LAGOP in that case). *RNC* Certification Order ¶ 47.

72. In 2014, LAGOP assisted then Congressman Bill Cassidy in his run against the incumbent Senator Mary Landrieu, in which he prevailed. (LAGOP 30(b)(6) Dep. at 32:7-23.) LAGOP did "a lot to help" Senator Cassidy in that race. (Villere Dep. at 48:8-12.) LAGOP believes that the "millions" it spent on the race helped Senator Cassidy win his race and that its work "was definitely a big part of our [R]epublican candidate's success across the State in 2014": LAGOP "led the field effort, voter contacts, lots of voter contact, mail and phones. I think we made our biggest impact in turning out [R]epublican voters." (LAGOP 30(b)(6) Dep. at 72:22-73:7.)

73. The latter part of 2013 and 2014 when Senator Cassidy was running was a "big year for LAGOP in terms of its budget." (LAGOP 30(b)(6) Dep. at 40:5-11.) It received more

than $2.5 million in transfers from other Republican committees, including the RNC. (*Id.* at 40:12-41:17 & LAGOP Exh. 2 (FEC Exh. 9).)

74. In the fall of 2014, LAGOP and the Cassidy campaign set up a "Joint Fundraising Committee" ("JFC"). (LAGOP 30(b)(6) Dep. at 74:22-24.) Money contributed to the JFC was allocated according to a priority system, with the first multiples of $2,600 (the individual contribution limit in 2014) going to the Cassidy campaign, depending upon how many elections they could be attributed to, and then "the next [$]10,000 would come to the State Party." (*Id.* at 74:25-75:14, 76:9-18.)

75. Through the JFC, the Cassidy campaign raised funds for LAGOP. (LAGOP 30(b)(6) Dep. at 79:3-24.) For example, Senator Cassidy's fundraiser Nicole [Licardi] raised $10,000 contributions, the maximum amount individuals can contribute, that were contributed to LAGOP through the JFC fundraising mechanism. (*Id.*; *see e.g.*, *id.* at 82:2-12

,[2] LAGOP Exh. 5 (FEC Exh. 10).) Senator Cassidy's campaign sometimes raised funds for LAGOP without LAGOP even being aware that the funds had been raised. (LAGOP 30(b)(6) Dep. at 85:19-24;

.)

Sometimes, the Cassidy campaign gave contributions directly to LAGOP instead of the campaign's victory fund. (*Id.* at 83:4-7;

.) LAGOP did not know what conversations the Cassidy campaign had with donors in order to get them to make

[2] LAGOP has stipulated that all of the documents it produced in response to the FEC's requests for production of documents, including those subject to the protective order the Court has entered, are authentic. (LAGOP 30(b)(6) Dep. at 66:12-17.)

such contributions. LAGOP's Executive Director, Mr. Dorè, testified that he could not "recall an instance of being with the Cassidy campaign staff and donor about fundraising." (LAGOP 30(b)(6) Dep. at 78:1-14.)

76. LAGOP and the Cassidy campaign referred to the funds that were raised through the JFC for LAGOP as the "mail account." (LAGOP 30(b)(6) Dep. at 80:5-14.) The "mail account" was contained within LAGOP's federal account. (*Id.* at 87:24-88:1.) It was primarily used for non-allocable mail, a kind of exempt activity. *Id.* at 80:25-81:2; *see generally* FEC, *Party Committees*, http://www.fec.gov/rad/parties/FederalElectionCommission-RAD-Parties.shtml (explaining how party committees may conduct and report "exempt activity" meeting the definition of FEA). These mailings included everything from "Bill Cassidy is a great guy, you should vote for him, Mary Landrieu is Barack Obama to if you don't vote, they will win." (LAGOP 30(b)(6) Dep. at 81:18-22;

.)

77. Of the funds raised for the JFC, LAGOP and the Cassidy campaign agreed that LAGOP would reserve 10% that was not to be used on the mailings. (LAGOP 30(b)(6) Dep. at 87:6-89:3; .) This was designated as "overhead" reserved for LAGOP's use. (*Id.*)

78. Members of Cassidy's campaign staff were closely involved in LAGOP's expenditures of funds from the mail account. They would "sign off for it before we sent a mail piece, because it was a coordinated expense." (LAGOP 30(b)(6) Dep. at 89:6-17.) Cassidy staff referred to "our" mail account when discussing "[t]he money that they raised, that they helped us raise, the account they helped us raise money for" that was "[s]pent on the coordination of the Cassidy campaign." (*Id.* at 90:2-91:2;

.)

79. In addition to working very closely with the Cassidy campaign itself, LAGOP also worked very closely with both the RNC and the NRSC on the race. The NRSC deployed about a dozen of its employees to Louisiana to work with the Republican "team" on Senator Cassidy's campaign. (LAGOP 30(b)(6) Dep. at 62:12-22.) For example, when LAGOP came up with an opposition website, the NRSC "assisted us in paying the vendor through [a] transfer." (*Id.* at 61:2-10, 62:23-63:20.) LAGOP and NRSC jointly worked on media press releases. (*Id.* at 64:14-51:1.)

80. The RNC also participated in a deployment of "several hundred employees from other state parties and the RNC in Louisiana for over a month in assisting [LAGOP's] field program" in connection with the "Cassidy race." (LAGOP 30(b)(6) Dep. at 41:18-42:5.)

81. JPGOP's Chair is Polly Thomas. (Dep. of Paulette Thomas at 11:8-9 (Jan. 27, 2016) ("JPGOP 30(b)(6) Dep.") (FEC Exh. 11).) Ms. Thomas has also been a member of the LAGOP and she served as LAGOP's Vice Chair from 2000 to 2004 or 2004 to 2008. (*Id.* at 12:15-13:16.) JPGOP's "mission is to elect appropriate [R]epublicans to office and to support those, our endorsed candidates, in helping them get elected." (*Id.* at 19:14-18.)

82. JPGOP has no contributors and a single revenue source, qualifying fees paid for ballot access. (JPGOP 30(b)(6) Dep. at 23:5-10.) It has in the "neighborhood of $22,000" in its bank account. (*Id.* at 24:14-18.) It "exclusively spends money on its internal operations." (*Id.* at 50:23-25.) LAGOP has instructed JPGOP not to do anything "federal." (*Id.* at 58:2-23.) At present, JPGOP has not discussed or determined whether it desires "to use funds that are contributed by individuals on activities that support[] federal candidates." (*Id.* at 67:16-20.) It has made no plans to maintain independence if it prevails in this case. (*Id.* at 68:16-69:5.)

83. JPGOP has relationships with federal candidates. (JPGOP 30(b)(6) Dep. at 43:12-44:2.) When it decides to endorse a candidate, it offers the candidate the use of its logo and makes an announcement on its website. (*Id.* at 45:5-22.)

84. OPGOP's Chairman is John A. Batt, Jr. (Dep. of John A. Batt, Jr. at 8:15-18 (Jan. 27, 2016) ("OPGOP 30(b)(6) Dep.") (FEC Exh. 12).) Mr. Batt is also currently a Deputy Chairman for LAGOP. (*Id.* at 8:19-9:2.) He was appointed by Mr. Villere and has held the position for "[r]oughly five or six years." (*Id.* at 9:19-25.) OPGOP's mission is "[t]he advancement of [R]epublican candidates into elected positions, parish and statewide." (*Id.* at 16:9-11.)

85. OPGOP has no contributors and its budget is "exclusively" derived from qualifying fees paid for ballot access. (OPGOP 30(b)(6) Dep. at 21:21-22:14.) It has "less than $5,000 in our treasury on an annual basis." (*Id.* at 22:15-17.) It spends money on "[r]efreshments at meetings" and mailings done with nonfederal candidates. (*Id.* at 22:20-24.) Mr. Batt explained that Republican committees could be viewed as a "flowchart," with the local committees at the bottom, "above that would be the LAGOP," and the RNC above the LAGOP. (*Id.* at 30:6-31:3.) From time to time, LAGOP asks OPGOP to ask its members for help in connection with various elections. (*Id.* at 31:4-32:14.)

86. When asked whether there is something the OPGOP would like to do but cannot, Mr. Batt testified: "No. Pardon me. I'll correct that. Getting more [R]epublicans elected in Orleans Parish." (OPGOP 30(b)(6) Dep. at 38:5-10.) When asked if OPGOP would like to deal with outside monies, he answered: "Not necessarily. No." (*Id.* at 39:4-6.) If OPGOP could take in more money, Mr. Batt explained that it would desire to "do more things" but "I don't think the [committee] or myself or the Board has actually sat down and thought about what those things might be." (*Id.* at 39:14-23.) Mr. Batt was "pretty sure" that the committee has not given any thought to how it will maintain independence if it prevails in this case and did not know what plans there might be. (*Id.* at 45:8-14.)

C. National and State Party Fundraising Totals

87. In each of the last four two-year election cycles, the LAGOP has raised hundreds of thousands of dollars for its federal committee. In the two-year 2008 election cycle, LAGOP raised $757,887 in federal funds and received $216,637 in transfers from other committees. (Decl. of Paul C. Clark II., Ph.D. ¶ 2 (March 17, 2016) (FEC Exh. 13) (citing FEC, Candidate and Committee Viewer (March 9, 2016),

http://www.fec.gov/finance/disclosure/candcmte_info.shtml (results for committee ID C00187450)).) In the 2010 election cycle, LAGOP raised $790,724 and received $125,774 in transfers from other committees. (*Id.*) In the 2012 election cycle, LAGOP raised $388,605 and received $69,465 in transfers from other committees. (*Id.*) In the 2014 election cycle, LAGOP raised $714,278 and received $2,544,892 in transfers from other committees. (*Id.*) Of the $2,956,768 LAGOP received in transfers between 2007 and 2014, the RNC reports disbursements to LAGOP of $2,109,533. (*Id.*) LAGOP reports receipts during this same period from the RNC of $1,766,078. (*Id.*)

88. In the 2008 cycle, the LAGOP supported its federal candidates by making $4,760 in federal contributions, $57,995 in coordinated expenditures, no independent expenditures, and spending $718,057 on federal election activity. (Clark Decl. ¶ 3 (citing FEC, Candidate and Committee Viewer (March 9, 2016) (results for committee ID C00187450)).) In the 2010 cycle, the LAGOP reported $3,000 in contributions, $445,004 in coordinated expenditures, no independent expenditures, and spending $107,409 on federal election activity. (*Id.*) In the 2012 cycle, the LAGOP reported $5,450 in contributions, made no coordinated expenditures or independent expenditures, and spent $210,949 on federal election activity. (*Id.*) In the 2014 cycle, the LAGOP made no contributions, made $7,287 in coordinated expenditures, made no independent expenditures, and spent $1,070,858 on federal election activity. (*Id.*)

89. In both the 2011-2012 election cycle and the 2013-2014 election cycle, the Republican national party committees (the RNC, NRSC, and the NRCC) raised more money than in the election cycles prior to the effective date of BCRA, when they were also able to raise "soft" money—money that was not subject to the limitations or prohibitions of FECA. (Clark Decl. ¶ 4 (comparing FEC, National Political Party Summary (March 9, 2016),

http://www.fec.gov/disclosure/partySummary.do (select Party Financial Activity Data for 2012 and for 2014), with FEC, Candidate and Committee Viewer, http://www.fec.gov/finance/disclosure/candcmte_info.shtml (off-year 1998 cycle receipts for RNC, NRSC, and NRCC, committee Nos. C00003418, C00027466, C00075820, respectively)).)

90. In both the 2011-2012 election cycle and the 2013-2014 election cycle, the Democratic national party committees (the Democratic National Committee ("DNC"), the Democratic Senatorial Campaign Committee ("DSCC"), and the Democratic Congressional Campaign Committee ("DCCC")) raised more money than in the election cycles prior to the effective date of BCRA, when they were also able to raise "soft" money—money that was not subject to the limitations or prohibitions of FECA. (Clark Decl. ¶ 5 (comparing FEC, National Political Party Summary (March 9, 2016), http://www.fec.gov/disclosure/partySummary.do (select Party Financial Activity Data for 2012 and 2014), with FEC, Candidate and Committee Viewer, http://www.fec.gov/finance/disclosure/candcmte_info.shtml (off-year 1998 cycle receipts for DNC, DSCC, and DCCC, committee Nos. C00010603, C00042366, C00000935, respectively)).)

91. In each of the last four two-year election cycles, the Republican national party committees have raised hundreds of millions of dollars. (Clark Decl. ¶ 6 (citing FEC, National Political Party Summary (Aug. 25, 2014), http://www.fec.gov/disclosure/partySummary.do?cf=phome (select Party Financial Activity Data)).) In the 2008 election cycle, the Republican national party committees raised $640,308,291. (*Id.*) In the 2010 election cycle, the Republican national party committees raised $517,896,934. (*Id.*) In the 2012 election cycle, the Republican national party committees raised

$620,190,522. (*Id*.) In the 2014 election cycle, the Republican national party committees raised $538,435,213. (*Id*.)

92. Those Republican party committees also reported transfer activity. In the 2008 cycle the Republican national party committees reported making $56,414,451 in transfers and receiving $138,128,778 in transfers. (*Id.*) In the 2010 cycle the Republican national party committees reported making $79,308,156 in transfers and receiving $26,342,204 in transfers. (*Id.*) In the 2012 cycle the Republican national party committees reported making $140,554,396 in transfers and receiving $141,198,417 in transfers. (*Id.*) In the 2014 cycle the Republican national party committees reported making $85,671,951 in transfers and receiving $20,882,425 in transfers. (*Id.*) "Transfers" involve the movement of funds "between and among political committees which are national, State, district, or local committees (including any subordinate committee thereof) of the same political party." 52 U.S.C. § 30116 (a)(4).

93. In each of the last four two-year election cycles, the Democratic national party committees have raised hundreds of millions of dollars. (Clark Decl. ¶ 8 (citing FEC, National Political Party Summary (Aug. 25, 2014), http://www.fec.gov/disclosure/partySummary.do?cf=phome (select Party Financial Activity Data)).) In the 2008 election cycle, the Democratic national party committees raised $599,107,747. (*Id.*) In the 2010 election cycle, the Democratic national party committees raised $442,415,070. (*Id.*) In the 2012 election cycle, the Democratic national party committees raised $662,987,397. (*Id*.) In the 2014 election cycle, the Democratic national party committees raised $476,627,509. (*Id*.)

94. Those party committees also reported transfer activity. In the 2008 cycle the Democratic national party committees reported making $129,205,358 in transfers and receiving

$114,805,284 in transfers. (*Id.*) In the 2010 cycle the Democratic national party committees reported making $33,493,608 in transfers and receiving $26,104,525 in transfers. (*Id.*) In the 2012 cycle the Democratic national party committees reported making $82,387,628 in transfers and receiving $188,592,366 in transfers. (*Id.*) In the 2014 cycle the Democratic national party committees reported making $56,777,229 in transfers and receiving $39,601,862 in transfers. (*Id.*)

95. "[T]he national committees raised more in hard money alone in 2004 ($1.46 billion) than they had in hard and soft money combined in 2000 ($751 million), and their hard money receipts in 2006 ($1.082 billion) exceeded their hard and soft money receipts in 2002 ($651 million). Even without soft money, the six national party committees have gone on to set new fundraising records in each election cycle since 2006 . . . ." Krasno at 10; *see also FEC Summarizes Campaign Activity of the 2011-2012 Election Cycle* (revised Mar. 27, 2014), http://www.fec.gov/press/press2013/20130419_2012-24m-Summary.shtml

96. State political party committees have raised over $400 million in federal and nonfederal funds in every election cycle from 2000 to 2012. Indeed, in recent election cycles, state party political committees raised nearly as much in federal and nonfederal funds as they had in the election cycles before BCRA's effective date, when they were able to receive transfers of nonfederal funds from national party committees. In the 2000 cycle, the "major state-level political party committees raised $582.5 million[.]" (Nat'l Inst. on Money in State Politics, *State Elections Overview 2000*, at 4, 8-9 (Aug. 2002) http://beta.followthemoney.org/assets/press/ZZ/20020701.pdf (including funds for "all party PACs").) State party receipts in the 2002 cycle, before BCRA's effective date, totaled $709.5 million. (Nat'l Inst. on Money in State Politics, *State Elections Overview 2002* at 2, 9, 11

http://classic.followthemoney.org/press/Reports/200411181.pdf (including the total for state party committees and party legislative caucus committees).) State party receipts in the 2004 cycle, after BCRA's effective date, totaled $411.3 million. (Nat'l Inst. on Money in State Politics, *State Elections Overview 2004* at 2, 9-11 http://classic.followthemoney.org/press/Reports/200601041.pdf (Dec. 2005) (including the total for state party committees and party legislative caucus committees).) In the 2006 cycle, state parties' receipts totaled $621 million. (Nat'l Inst. on Money in State Politics, *2006 State Election Overview*, 9-11 (Mar. 2008), http://classic.followthemoney.org/press/Reports/State_Overview_2006.pdf (summarizing total including legislative caucus committees).) In the 2008 cycle, state parties' receipts totaled $548 million. (Nat'l Inst. on Money in State Politics, *An Overview of State Campaigns, 2007-2008*, http://classic.followthemoney.org/press/ReportView.phtml?r=420&ext=6#tableid6 (listing total receipts for party committees and legislative caucus committees, and explaining that further detailed analysis in report was limited to the receipts of party committees).) In the 2010 cycle state parties' receipts totaled $627.1 million. (Nat'l Inst. on Money in State Politics, *An Overview of Campaign Finances, 2009-2010 Elections*, http://classic.followthemoney.org/press/ReportView.phtml?r=487&ext=1 (same).) The State parties have consistently raised hundreds of millions of dollars. In the 2012 cycle, state parties' receipts totaled $549.7 million. (Nat'l Inst. on Money in State Politics, *An Overview of Campaign Finances, 2011-2012 Elections*, http://www.followthemoney.org/research/institute-reports/overview-of-campaign-finances-20112012-elections/#section_6 (listing total receipts for party committees and legislative caucus committees).)

97. Queries to the FEC's disclosure database in each of the cycles described below show that state and local parties have raised and spent hundreds of millions of dollars in federal funds. (Clark Decl ¶ 9.) In the 2014 cycle state and local parties' receipts totaled $438,939,035. (*Id.*) In the 2012 cycle, state and local parties' receipts totaled $638,650,395. (*Id.*) In the 2010 cycle state and local parties receipts totaled $397,569,085. (*Id.*) In the 2008 cycle, state and local parties' receipts totaled $595,686,022. In the years before BCRA's enactment, state and local parties' receipts totaled $787,903,254 in the 2000 cycle and totaled $391,048,052 in the 1998 cycle. (*Id.*)

IV. NATIONAL, STATE, AND LOCAL POLITICAL PARTIES HAVE BEEN INVOLVED IN ACTUAL AND APPARENT QUID PRO QUO EXCHANGES

98. Because of the close relationship between parties and candidates, contributions to parties can lead to the actuality and appearance of quid pro quo corruption.

99. As the Supreme Court observed, "[o]nce elected to legislative office, public officials enter an environment in which political parties-in-government control the resources crucial to subsequent electoral success and legislative power. Political parties organize the legislative caucuses that make committee assignments." *McConnell*, 540 U.S. at 156 (internal quotation marks omitted). Thus, "'officeholders' reelection prospects are significantly influenced by attitudes of party leadership,'" *id.* (quoting Krasno & Sorauf Expert Report), and an individual Member's stature and responsibilities vary dramatically depending on whether his party is in the majority or in the minority.

100. Parties are not like regular political committees. Nonconnected committees "do not select slates of candidates for elections," "determine who will serve on legislative committees, elect congressional leadership, or organize legislative caucuses," but these activities count among the parties' core responsibilities. *McConnell*, 540 U.S. at 188 ("[P]olitical parties

have influence and power in the Legislature that vastly exceeds that of any interest group."); *id.* ("[P]arty affiliation is the primary way . . . voters identify candidates," and therefore parties have special relationships with those who hold public office.) "A primary goal of all the major political parties is to win elections." *Cao*, 688 F. Supp. 2d at 527; *see also id.* ("The ultimate goal of a political party is to get as many party members as possible into elective office, and in doing so to increase voting and party activity by average party members." (quoting declaration from former Representative Meehan)); *id*. ("State parties also have the primary purpose of winning elections."); *id.* ("[C]ertainly we're concerned about issues, but our main emphasis is to run communication in support of electing our candidates." (quoting LAGOP's representative)).

101. This overriding purpose makes political parties particularly susceptible to contributors who want to create a quid pro quo relationship with an officeholder. As the Supreme Court has explained,

> Parties are . . . necessarily the instruments of some [donors] whose object is not to support the party's message or to elect party candidates across the board, but . . . to support a specific candidate for the sake of a position on one . . . issue, or even to support any candidate who will be obliged . . . .

FEC v. Colo. Republican Fed. Campaign Comm. v. FEC, 533 U.S. 431, 451-52 (2001) ("*Colorado II*"); *id.* at 455 ("In reality, parties . . . function for the benefit of donors whose object is to place candidates under obligation, a fact that parties cannot escape. Indeed, parties' capacity to concentrate power to elect is the very capacity that apparently opens them to exploitation as channels for circumventing contribution and coordinated spending limits binding on other political players."); *id.* at 452 ("[W]hether they like it or not, [parties] act as agents for spending on behalf of those who seek to produce obligated officeholders."); *cf. also* Krasno at 2 (explaining that "political parties enjoy a set of substantial legal advantages elsewhere in

campaign finance and election law that rendered their complaints about [BCRA's] ban on soft money less powerful"); *id.* at 9-10 (explaining why Senator McConnell's assertion that the soft money ban would "'take[] the parties out of politics'" was incorrect, due to parties' adaptability and actual fundraising experience since BCRA).

102. In passing section 30125(b), Congress recognized that the national political parties would react to its restrictions on soft money "by directing soft-money contributors to the state committees, and that federal candidates would be just as indebted to these contributors as they had been to those who had formerly contributed to the national parties." *McConnell*, 540 U.S. at 165. Congress thus sought to "[p]revent[] corrupting activity from shifting wholesale to state committees" or local committees "and thereby eviscerating FECA." *Id.* at 165-66.

103. The evidence in the *McConnell* record showed that "[p]arties can stretch their soft money even further by transferring soft and hard money to state parties where they can achieve a better ratio of soft to hard dollars than if they spent the money themselves. 251 F. Supp. 2d at 454 (opinion of Kollar-Kotelly, J.) (quoting Magleby Expert Report). The national political parties took advantage of this loophole. "One RNC memorandum contains a chart which 'clearly demonstrates what we already clearly know, that any media we place in the target presidential states should be placed through state parties.'" *Id.* (quoting RNC Memorandum dated March 18, 1996, titled "Ballot Allocation of Target States"). "The memorandum conclude[d] that by using the state political parties, rather than directly making the purchase, the RNC would save $2.8 million in federal funds on a $10 million media buy." *Id.*; *see also id.* ("'Both political parties have found spending soft money with its accompanying hard money match through their state parties to work smoothly, for the most part, and state officials readily acknowledge they are simply "pass throughs" to the vendors providing the broadcast ads or

direct mail'" (quoting Magleby Expert Report); *id.* at 818 (opinion of Leon, J.) ("'The national Democratic party managed to finance two-thirds of its pro-Clinton "issue ad" television blitz by taking advantage of the more favorable allocation methods available to state parties. They simply transferred the requisite mix of hard and soft dollars to party committees in the states they targeted and had the state committees place the ads.'" (quoting Mann Expert Report)). Thus, the Supreme Court concluded that "state committees function as an alternative avenue for precisely the same corrupting forces":

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

McConnell, 540 U.S. at 165 & n.59 (quoting Rudman Decl.).

104. Members of Congress know that contributions to state parties can be as valuable to campaigns as direct contributions. Former Senator Alan Simpson testified in *McConnell* that "[d]onors do not really differentiate between hard and soft money" when making contributions to the parties. (Decl. of Alan K. Simpson ¶ 6, Oct. 4, 2002, in *McConnell v. FEC*, No. 02-582 (D.D.C. 2004) (FEC Exh. 14).) He explained that there is often "little practical difference between hard and soft money" in terms of how funds are used. (*Id.* ¶ 7.) "Although soft money cannot be given directly to federal candidates, everyone knows that it is fairly easy to push the

money through our tortured system to benefit specific candidates. I always knew that both the national and state parties would find ways to assist my candidacy with soft money, whether it be staff assistance, polling, get-out-the-vote activities, or buying television advertisements." (*Id.*)

105. Donors and lobbyists know that contributions to state parties are valuable to federal candidates. (*See, e.g.*, Decl. of Steven T. Kirsch ¶¶ 6, 9, Aug. 19, 2002, in *McConnell v. FEC*, No. 02-582 (D.D.C. 2003) (donor explaining that large soft money contributions to a state party benefit federal candidates) (FEC Exh. 15); Decl. of Robert W. Hickmott ¶ 8, Oct. 3, 2002, in *McConnell v. FEC*, No. 02-582 (D.D.C. 2003) (lobbyist explaining that after you have maxed out in hard dollars to a federal candidate "you are sometimes asked to do more for the candidate" by making donations to the national or state party) (FEC Exh. 16); Decl. of Wade Randlett ¶ 9, Oct. 1, 2002, in *McConnell v. FEC*, No. 02-582 (D.D.C. 2003) (fundraiser explaining that "national committees have asked soft money donors to write checks to national and state parties solely in order to assist federal campaigns") (FEC Exh. 17).)

106. In *McConnell*, the Supreme Court itself found that the "evidence connect[ed] soft money to manipulations of the legislative calendar, leading to Congress' failure to enact, among other things, generic drug legislation, tort reform, and tobacco legislation." 540 U.S. at 150; *see also id.* (citing evidence of how, *e.g.*, "[d]onations from the tobacco industry to Republicans scuttled tobacco legislation, just as contributions from the trial lawyers to Democrats stopped tort reform").

107. The "treasure trove" of record evidence in *McConnell* was exhaustively catalogued in several lower court opinions. *See, e.g.*, 251 F. Supp. 2d at 481-512 (opinion of Kollar-Kotelly, J.). That record contains frank testimony from former officeholders about how large soft money donors to political parties were able to exchange their donations for favorable

legislative outcomes. *McConnell*, 251 F. Supp. 2d at 496 ("Senators are pressed by their benefactors to introduce legislation, to amend legislation, to block legislation, and to vote on legislation in a certain way. No one says: 'We gave money so you should do this to help us.' No one needs to say it — it is perfectly understood by all participants in every such meeting." (quoting Rudman Declaration)). For example, Senator McCain testified regarding the effect large soft money contributors had in eliminating a provision regarding the stock option accounting in the Sarbanes-Oxley legislation. (*See* Decl. of John McCain ¶ 10 (October 4, 2002) in *McConnell v. FEC*, No. 02-582 (D.D.C. 2003) (FEC Exh. 18).) He described a call from a large donor to the Senate leadership that resulted in the leadership using a procedural maneuver to block a vote on that provision, a provision that otherwise had broad support. (*Id.*)

108. The public record contains significant evidence of actual and apparent quid pro quos involving contributions to national, state, and local parties. *See supra* ¶¶ 11, 16-19, 106-07, 109-15; *infra* ¶¶ 118-20, 123-28, 130-34.

109. In 1976, Armand Hammer pled guilty to making an illegal contribution to President Nixon's reelection campaign. David Rampe, *Armand Hammer Pardoned by Bush*, N.Y. Times (Aug. 15, 1989), http://www.nytimes.com/1989/08/15/us/armand-hammer-pardoned-by-bush.html (FEC Exh. 19). Mr. Hammer had contributed $54,000 to the Nixon re-election campaign in the name of another, a friend and subordinate at Occidental Petroleum. (*See id.*) The subordinate was convicted of concealing the source of the contribution. In 1989, Mr. Hammer, then the Chairman of Occidental Petroleum, made contributions exceeding $100,000 to the Republican Party and another $100,000 to the Bush-Quayle Inaugural Committee. *See* Marc Lacey, *Political Memo; Resurrecting Ghosts of Pardons Past*, N.Y. Times (Mar. 4, 2001), http://www.nytimes.com/2001/03/04/us/political-memo-resurrecting-ghosts-of-

pardons-past.html (FEC Exh. 20). On August 14, 1989, then President George H.W. Bush pardoned Mr. Hammer for his illegal contribution to President Nixon's reelection campaign. *See* David Hoffman, *Bush Signs Pardon for Armand Hammer*, Wash. Post (Aug. 15, 1989), https://www.washingtonpost.com/archive/politics/1989/08/15/bush-signs-pardon-for-armand-hammer/b6cb4260-bbb1-40ae-a9d6-7f67ef4a7226/ (FEC Exh. 21). In comparing the pardon to President Bill Clinton's later pardon of Marc Rich, Representative Henry Waxman observed that "'[t]he appearance of a quid pro quo is just as strong in the Hammer case as in the Rich case, if not stronger, since Mr. Hammer himself gave the contribution.'" Lacey, *Political Memo; Resurrecting Ghosts of Pardons Past* at 2.

110. In 1988, Edwin Cox, Jr. pled guilty to bank fraud by falsifying collateral on a nearly $80 million loan. *Bank Fraud Guilty Plea*, N.Y. Times (June 17, 1988), http://www.nytimes.com/1988/06/17/business/bank-fraud-guilty-plea.html (FEC Exh. 22). According to CNN's matching of Cox family members with contribution records, from 1980 to 2000 that family contributed approximately $200,000 to campaigns of President George H.W. Bush and his relatives and Republican committees. Kelly Wallace, *Former President Bush granted last-minute pardon to contributor's son*, CNN (Mar. 7, 2001, 1:57 PM), http://www.cnn.com/2001/ALLPOLITICS/03/07/bush.pardon/ (FEC Exh. 23). In addition to contributing to these various campaigns, Cox's father, Texas oilman Edwin Cox, Sr., coordinated political support for the pardon. On November 24, 1992, former White House chief of staff James A. Baker III wrote to the White House counsel, copying the president, that "Former Texas Gov. Bill Clements called me and asked me whether or not the president would consider a pardon for Edwin Cox, son of Ed Cox, *who is a longtime supporter of the president's*." *Id.* (emphasis added). On January 18, 1993, two days before leaving the White House, President

Bush pardoned Mr. Cox for his bank fraud conviction. Later that year, Edwin Cox, Sr. donated at least $100,000 to the George Bush Presidential Library. Michael Weisskopf, *A Pardon, a Presidential Library, a Big Donation*, Time (Mar. 6, 2001), http://content.time.com/time/nation/article/0,8599,101652,00.html (FEC Exh. 24) (Edwin Cox, Sr.'s "name is etched in gold as a 'benefactor,' those whose donations amount to between $100,000 to $250,000").

111. In *McConnell*, the record evidence abundantly documented the point that, as one former senator described it, "'[l]arge soft money contributions in fact distort the legislative process. They affect what gets done and how it gets done. . . . [M]ake no mistake about it — this money affects outcomes . . . .'" *McConnell*, 251 F. Supp. 2d at 496 (opinion of Kollar-Kotelly, J.) (quoting Sen. Rudman).

112. As another Senator testified:

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

McConnell, 251 F. Supp. 2d at 482 (Kollar-Kotelly, J.) (quoting former Sen. Simon); *see also Colorado II*, 533 U.S. at 451 n.12 (2001) (quoting Senator Simon's statement that "I believe

people contribute to party committees on both sides of the aisle for the same reason that Federal Express does, because they want favors. There is an expectation that giving to party committees helps you legislatively").

113. In July 1995, the Department of Interior denied an application by three bands of Wisconsin Indian tribes to open a casino in Hudson, Wisconsin. Initially, the application was approved by a branch office of the Bureau of Indian Affairs ("BIA"). Thompson Comm. Rep., S. Rep. No. 105-167 at 44 (1998) ("Thompson Comm. Rep."). A wealthy group of neighboring tribes in Minnesota, who operated a competing casino, opposed the application. Pending final review by the BIA, the opposing tribes' lobbyist met with President Clinton and officials of the DNC. Following these meetings, DNC officials promised to talk to the White House and have them contact the Secretary of the Interior, Bruce Babbitt. *Id.* at 45. Meanwhile, a career BIA employee had drafted "a 17-page analysis recommending *approval* of the Hudson application." *Id.* According to testimony provided to the Thompson Committee, Secretary Babbitt felt pressure from the White House to make a determination quickly on the application and was aware of tribal "political contributions" to the DNC and state Democratic parties. *Id.* (recalling that Secretary Babbitt remarked to the applicant tribes' attorney, "Do you have any idea how much these Indians, Indians with gaming contracts . . . have given to Democrats? . . . [H]alf a million dollars."). Ultimately, the application was denied. In the four months following the application's denial, "the opposition tribes contributed $53,000 to the DNC and the DSCC; [] an additional $230,000 to the DNC and the DSCC during 1996, and [] more than $50,000 in additional money to the Minnesota [Democratic-Farmer-Labor] Party." *Id.* "There is strong circumstantial evidence that the Interior Department's decision to deny the Hudson application was caused in large part by improper political considerations, including the promise of political

contributions from opposition tribes." *Id.* at 3168; *see also id.* at 3193 ("From all the circumstances, there appears to be a direct relationship between the activities of the Department of the Interior and contributions received by the DNC and DSCC from the opposition tribes"). Political donations to the DNC and the Minnesota Democratic-Farmer-Labor Party "apparently *succeeded* in purchasing government policy concessions." *Id.* at 45 (emphasis in original); *see also McConnell*, 540 U.S. at 165 & n.61 (discussing the episode in connection with its analysis of section 30125(b)).

114. In August 1994, the Sault Ste. Marie Chippewa tribe's application to open a casino in the "Greektown area of downtown Detroit" was approved by the Department of the Interior but blocked by the governor of Michigan. Thompson Comm. Rep. at 3075. In the following election cycle, the tribe "contributed a total of $282,500 to twelve different state Democratic parties." *Id.* at 3075-76. Some of the tribe's largest contributions included $71,500 to the Tennessee Democratic Party, $60,000 to the Democratic Party of Illinois, $44,000 to the Democratic Party of Oregon, and $30,000 to the Maine Democratic Party. *Id.* According to a Democratic National Committee finance staffer, the tribe contributed because they "'needed help'" with an issue impacting "Native Americans." *Id.* at 3076. In 2000, the tribe successfully opened a casino in the Greektown area of downtown Detroit, but filed for bankruptcy in 2008. *See* H.R. Rep. 110-542, pt. 2, at 4 (2008) (FEC Exh. 25); *In re Greektown Holdings, LLC*, 728 F.3d 567, 570 (6th Cir. 2013).

115. Between 1995 and 1996, Roger Tamraz contributed approximately $300,000 to the DNC and various state Democratic parties to gain support for an oil-pipeline project in the Caucuses, which was opposed by the National Security Council ("NSC") and other executive branch agencies. Thompson Comm. Rep. at 2907-2931. NSC staff developed a policy of

denying Mr. Tamraz "high-level U.S. Government access" to discuss the pipeline. *Id.* at 2911. To circumvent this policy, Mr. Tamraz met with DNC officials and began contributing to the DNC and state Democratic parties. All told, "by the end of March 1996 Tamraz had made contributions totaling $100,000 to the Virginia Democratic Party, $25,000 to the Virginia Legislative Conference, $20,000 to [Richard] Molpus['] campaign [for governor of Mississippi], $25,000 to the Louisiana Democratic Party, and $130,000 to the DNC." *Id.* at 2913-14. In addition, Mr. Tamraz contributed "'10 [or] 20' thousand dollars either to Senator [Ted] Kennedy's campaign or to the Massachusetts Democratic Party." *Id.* at 2915. DNC officials "went to great lengths in an attempt to provide Tamraz the 'political leverage' he sought in his Caspian ventures." *Id.* at 2913. Their efforts included providing pressure from White House and Department of Energy officials to change the U.S. Government's position on the pipeline. While Mr. Tamraz was not ultimately successful "in persuading the U.S. Government to support his pipeline," the Committee Report notes, he "succeeded through his political contributions, and apparently the promise of additional donations, in enlisting senior United States officials in his attempt to change the working group's policy on Caspian energy issues." *Id.* at 2930. Undeterred by his White House rebuke, Mr. Tamraz also approached officials at the Overseas Private Investment Corporation, an independent U.S. Government agency whose Chairman and Chief Executive Officer was Ruth Harkin. Mr. Tamraz contributed "$35,000 to the Iowa Democratic Party at the request of Ruth Harkin's husband, Senator Tom Harkin of Iowa." *Id.* at 2929.

116. As explained by the D.C. Circuit in *Wagner v. FEC*, there were a "series of quid pro quos" made by the former lobbyist Jack Abramoff and former Representative Bob Ney. 793 F.3d at 15.

117. Abramoff, who pled guilty in 2006 to corruption charges and served time in prison, has written a book about how he and fellow lobbyists made campaign contributions to a range of political committees as part of a strategy to obtain political favors. *See generally* Jack Abramoff, *Capitol Punishment: The Hard Truth About Washington Corruption From America's Most Notorious Lobbyist* (WND Books 2011).

118. Abramoff's book describes a 1995 meeting involving former House Majority Leader Tom DeLay and executives from Microsoft. Abramoff at 64-65. The issue being discussed was "software program encryption export." Once "DeLay expressed his general support for their positions and reminded [the executives] that it was likely to be the Republicans who would defend the freedom they required to develop their company," he made a "soft appeal for political contributions from the company." *Id.* at 65. When one of the executives "firmly brushed off" the solicitation, DeLay delivered a stern message: He told the executives a story about an earlier time when Walmart had suffered by refusing to "'sully their hands'" by making a contribution. *Id.* That refusal backfired a year later when Walmart could not get DeLay to "'sully his hands'" with a request to get a highway ramp near one of their stores. *Id.* Once DeLay related this story, the "quivering executives" "finally got the joke." *Id.* "A $100,000 check was soon delivered to the [National] Republican Congressional Committee, and Microsoft's relationship with the American right commenced." *Id.*

119. In 2002, in exchange for former Representative Ney's commitment to add to the Help America Vote Act ("HAVA") language favoring a casino owned by the Tiguas, a Texas Indian tribe that Abramoff represented, Abramoff arranged for lavish contributions to be made by tribal officials to or on Ney's behalf, including at least $32,000 in contributions "to Ney's campaign and political [] committees." James Grimaldi & Susan Schmidt, *Lawmaker From*

Ohio Subpoenaed in Abramoff Case, Wash. Post, Nov. 5, 2005, www.washingtonpost.com/wp-dyn/content/article/2005/11/04/AR2005110401197.html (FEC Exh. 26); Plea Agreement, *United States* v. *Abramoff*, No. 06-01 (D.D.C. Jan. 3, 2006) (FEC Exh. 27); Factual Basis for the Plea of Jack A. Abramoff ¶¶ 32-36, *United States* v. *Abramoff*, No. 06-01 (D.D.C. Jan. 3, 2006) (FEC Exh. 28) ("Abramoff Factual Proffer"). Abramoff's sworn factual proffer specifically admitted that he and others obtained "Representative #1" (Ney's) use of his official position in March 2002 to "introduce and seek passage of legislation that would lift an existing federal ban against commercial gaming in order to benefit" the Tiguas. Abramoff Factual Proffer ¶ 33(e). Thus, on March 20, 2002, Ney agreed to "move forward" with the plan to slip into HAVA an "abstruse" sentence drafted by Abramoff's office that "would magically open the doors to the Tigua casino." Abramoff at 197-198, 205-206; *id*. at 198 (the abstruse sentence was: "'Public Law 100-89 is amended by striking section 207 (101 Stat. 668, 672)'"); *United States v. Ney*, No. 06-272, Plea Agreement (D.D.C. Sept. 13, 2006) (FEC Exh. 29); *United States v. Ney*, No. 06-272, Factual Basis for the Plea of Robert W. Ney ¶ 10(a)(ii) (D.D.C. Sept. 13, 2006) (FEC Exh. 30) ("Ney Factual Proffer"); Plea Agreement, *United States v. Scanlon*, No 05-411 (D.D.C. Nov. 11, 2005) (FEC Exh. 31); Factual Basis for the Plea of Michael P.S. Scanlon ¶¶ 4(d), 5(e), *United States v. Scanlon*, No 05-411 (D.D.C. Nov. 11, 2005) (FEC Exh. 32) ("Scanlon Factual Proffer"). Abramoff had the Tiguas make "substantial campaign contributions." Ney Factual Proffer ¶ 9(d) (admitting receipt of substantial campaign contributions from Abramoff's clients in exchange for performing official acts). FEC records reflect that, nine days after the March 20, 2002 agreement with Ney, the Tiguas gave $30,000 to the National Republican Congressional Committee – Contributions account, a soft money account of the NRCC. FEC, *National Republican Congressional Committee - Contributions Report of Receipts and Disbursements* at

5525-5526 (Apr. 15, 2002), http://docquery.fec.gov/cgi-bin/fecimg/?22990675525 (FEC Exh. 33). Furthermore, on March 22, 2002, two days after the agreement, the Tiguas had donated another $30,000 to the NRSC's nonfederal account. FEC, *NRSC Report of Receipts and Disbursements* at 870 (Apr. 19, 2002), http://docquery.fec.gov/cgi-bin/fecimg/?22020272668 (FEC Exh. 34); *accord* Abramoff at 197 (noting a strategy to prepare for a "backlash" through a strategy of "Tigua contributions to the Republican Party" which would help "construct a cadre of supporters"). According to Abramoff, Senator Christopher Dodd gave his "assent" in mid-April 2002 to the plan "and a request for a $50,000 contribution to the Democrats in Dodd's name." Abramoff at 206; *see also id.* at 206, 208 (explaining that Abramoff's associate assured Abramoff that he had covered the requested contribution "from the budget the Tiguas had provided him," and that neither of them considered that this "'contribution' was, in fact, merely a bribe"; according to Abramoff, Senator Dodd reneged when he later got "cold feet").

120. In 2000, Abramoff arranged for Ney to "place a statement" drafted by Abramoff's associate "into the *Congressional Record* that was critical of the then-owner of a Florida gaming company, and was calculated to pressure the then owner to sell on terms favorable to Abramoff and his partner." Abramoff Factual Proffer ¶ 33(b); Ney Factual Proffer ¶ 10(b); Scanlon Factual Proffer ¶ 5(b). In exchange, Abramoff and his associates arranged for a $10,000 contribution to be made to the NRCC at Ney's request, along with $4,000 worth of contributions to Ney's own committee. Abramoff Factual Proffer ¶ 32(d); Scanlon Factual Proffer ¶ 4(d); *accord* FEC, *Report of Receipts and Disbursements (Bob Ney for Congress)* at 18-19 (FEC Exh. 35) (listing four $1,000 contributions, including from Abramoff, Scanlon, and Adam Kidan); Adam Zorgan, Massimo Calabresi, *Jack Abramoff's $10,000 Question*, Time, Jan. 16, 2006, https://web.archive.org/web/20060118064758/http://www.cnn.com/2006/POLITICS/01/16/abra

moff.tm/ (FEC Exh. 36). As Time reported, Abramoff emailed Scanlon in October 2000: "'Would 10K for NRCC from Suncruz ["a Florida gambling-boat company that Abramoff and his partner Adam Kidan had bought the month before"] for Ney help?' Scanlon shot back: 'Yes, alot [sic]! But would have to give them a definate [sic] answer — and they need it this week . . . .'" *Jack Abramoff's $10,000 Question*.

121. In his book, Abramoff described his approach to lobbying:

> As a lobbyist, I thought it only natural and right that my clients should reward those members who saved them such substantial sums with generous contributions. This quid pro quo became one of the hallmarks of our lobbying efforts. . . . Since the tribes I represented lived and died by what the Congress did to and for them, and since they had comparatively unlimited funds, we were in the position to deliver millions of dollars in legal political contributions, and did.

Abramoff at 90; *accord McConnell*, 251 F. Supp. 2d at 495 (Kollar-Kotelly, J.) (quoting an affidavit of the lobbyist Danial Murray: "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.*" (emphasis added)); *id*. ("'To have true political clout, the giving and raising of campaign money for candidates and political parties is often critically important.'" (quoting lobbyist Wright Andrews)).

122. Abramoff also explained:

> The regularity with which my staff would return from congressional offices with request for funds, on the heels of our asking for help should have disturbed me, but it didn't. It was illegal and wrong, but it didn't register as abnormal in any way. I was so used to hearing senator so-and-so wants $25,000 for his charity, or representative X wants $50,000 for the Congressional Campaign Committee, that I would actually double check with my

> staff when they didn't request lucre for the legislators. The whole process became so perfunctory it actually seemed natural.

Abramoff at 206.

123. In 2005, Wisconsin Senate Majority Leader Charles Chvala pled guilty to felony corruption charges arising out of an investigation of his fundraising techniques. Steven Walters & Patrick Marley, *Chvala Reaches Plea Deal*, Milwaukee J. Sentinel, Oct. 24, 2005 (FEC Exh. 37). Witnesses confirmed Chvala's practice of conducting "'cattle calls,'" in which lobbyists were summoned to his offices and requested to have their clients contribute to a list of approved candidates, political party committees, and other committees, with "target amounts for contributions" suggested by Chvala. *Wisconsin v. Chvala*, Crim. Compl., Oct. 17, 2002 ¶ 8, http://www.docstoc.com/docs/133062815/Plaintiff-CRIMINAL-COMPLAINT-vs-Chvala (FEC Exh. 38) ("Chvala Complaint"); Steve Schultze & Richard P. Jones, *Chvala Charged With Extortion*, Milwaukee J. Sentinel, Oct. 18, 2002 (FEC. Exh. 39); Jodi Wilgoren, *Leader Charged With Extortion And Misconduct*, N.Y. Times, Oct. 18, 2002, http://www.nytimes.com/2002/10/18/politics/campaigns/18WISC.html?tntemail0 (FEC Exh. 40); *see also In re Disciplinary Proceedings Against Chvala*, 300 Wis. 2d 206, 208 (2007).

124. The allegations concerning Chvala's quid pro quo exchanges were extensive. He frequently "threatened to kill legislation" unless lobbyists and their clients "donated to Democratic candidates." *Leader Charged With Extortion And Misconduct*. "In one instance, . . . a man who wanted to donate his estate to the state to preserve its undeveloped land, was told [by Chvala] to give $500 each to two Senate Democrats seeking re-election," or else the needed legislative approval might "get into trouble." *Id.*; Chvala Complaint ¶ 14; *see also* Chvala Complaint ¶¶ 11-23. The individual made the contributions and the legislation passed. Chvala Complaint ¶¶ 19-20, 23.

125. The quid pro quos included contributions to party committees. On one occasion the Wisconsin Realtors Association was extorted by Chvala in connection with a bill dealing with the regulation of home inspectors. Chvala Complaint ¶ 24. After the political director of the Realtors Association's PAC failed to meet Chvala's demand for a $6,000 contribution to the Senate Democratic Campaign Committee (the maximum allowable amount, Wis. Stat. § 11.26(8)), Chvala increased the price of the legislation to $7,500. Chvala Complaint ¶ 30. The Realtors met the increased demand — an excess contribution — by having another committee contribute the additional $1,500. *Id.* ¶ 31; *see also id.* ¶ 47 (describing a meeting in which Chvala allegedly stated that "unless [a group] put $30,000 on the table [Chvala] would not help [it] legislatively").

126. Chvala and his aides also allegedly set up several political committees that purported to be independent, but in fact made excess in-kind contributions to a state senator's campaign through coordinated advertisements. Chvala Complaint ¶¶ 130-233; *see also* Wis. Stat. § 11.06(7). Contributions to these groups also resulted in legislative favors. *See, e.g.*, Chvala Complaint ¶ 173-174 (describing how a $40,000 contribution resulted in the removal of an "unfavorable" tax provision from the senate version of the 2001 budget). At least $292,000 of these contributions were funneled through a party-affiliated committee, the Democratic Legislative Campaign Committee, which then made matching contributions back to Chvala's ostensibly-independent committees supporting the other Senator's campaign. *See id.* ¶¶ 170-172 (explaining the belief that "the 'money goes through a washing machine and it comes out clean'"); *see also id.* ¶¶ 220-224 (suggesting a scheme of contributions routed through the Kansas Democratic Party).

127. Starting in 2005 and continuing into 2013, Karen L. Finley, former CEO of Redflex, and another Redflex employee named Aaron Rosenberg worked with John Raphael, a lobbyist, in seeking and retaining contracts for automated red light camera systems in Columbus, Ohio. According to one of the indictments arising out of these activities, a pay-to-play scheme was contrived, where campaign contributions were made to elected officials in the cities of Cleveland and Cincinnati. As part of the scheme, Rosenberg was allegedly solicited by former City Council member and current Mayor of Columbus Andrew J. Ginther for a $20,000 contribution in the fall of 2011. In short order, Finley approved the request and Ronsenberg provided the funds to Raphael, who then made a $20,000 contribution to the Ohio Democratic Party. Several weeks later, the Ohio Democratic Party provided $21,000 to Ginther's mayoral campaign. Information ¶ 12(j)-(p), *United States v. Karen L. Finley*, No. 15-148 (S.D. Ohio June 10, 2015) (FEC Exh. 41); *Selected Ohio Campaign Finance Reports* (FEC Exh. 42).

128. In 2006, Dario Herrera, a Clark County, Nevada Commissioner, was one of two such commissioners convicted of multiple counts of conspiracy, wire fraud, and extortion. Press Release, *Former Clark County Commissioners Sentenced To Prison For Federal Corruption Convictions,* Aug. 21, 2006, https://www.justice.gov/archive/usao/nv/news/2006/08212006.html (FEC Exh. 43). "The evidence introduced at trial demonstrated that" Herrera and others "used their public offices to further the interests of Michael Galardi, a strip club owner in Las Vegas. They solicited and accepted money, property, and services directly from Galardi . . . ." *Id.* In return, the county commissioners were involved in the passage of a zoning ordinance favorable to Galardi's interests, issuance of use permits and liquor licenses to his business, and defeat of a proposed ordinance harmful to his business. *Id.* Mr. Galardi and his wife each contributed $5,000 to the Nevada Democratic Party on September 19, 2002. *Selected State and FEC*

Campaign Finance Reports (FEC Exh. 44); *see also* Criminal Indictment ¶ 15(12), (18-19), (62), (77), (100), (106-120), *United States v. Malone, et al.*, No. 03-500 (D. Nev. Nov. 6, 2003) (FEC Exh. 45). The Nevada Democratic Party returned the contributions to the Galardis on November 7, 2003, one day after the filing of the indictment against Herrera. *Selected State and FEC Campaign Finance Reports* at 6.

129. In 2006, former Alabama governor Don Siegelman was convicted of "charges that included bribery and honest services fraud stemm[ing] from $500,000 in contributions he received from Richard S. Scrushy, the chief executive of a [hospital chain], for [Siegelman's] effort to create a state lottery." Alan Blinder, *Ex-Governor of Alabama Is Denied Release From Prison in Bribery Case*, N.Y. Times, Dec. 18, 2014, http://www.nytimes.com/2014/12/19/us/alabama-don-siegelman-denied-bail-in-corruption-appeal.html (FEC Exh. 46). "In exchange, prosecutors said, Mr. Siegelman agreed to name Mr. Scrushy, once one of the most powerful businessmen in Alabama, to a regulatory board" that regulates hospitals. *Id.*; *see also United States v. Siegelman*, 640 F.3d 1159, 1166 (11th Cir. 2011) (noting the evidence that Siegelman's company's lobbyist "'made it clear to'" one of Siegelman's closest associates that "'if Mr. Scrushy gave the $500,000 to the lottery campaign that we could not let him down'" with respect to the regulatory board seat).

130. In 2009, President Obama's nominated William Eacho, the former chief executive of Carlton Capital Group, as Ambassador to Austria. Mr. Eacho was a prolific bundler and contributor to candidate and party committees during the 2008 election cycle. According to the Center for Responsive Politics, he not only raised more than $600,000 for President Obama's presidential campaign, but also contributed heavily to state Democratic parties. Michael Beckel, *Two Dozen Bankrollers-Turned-Ambassadors Bundled at Least $10 Million for Barack Obama*,

OpenSecrets.org (Nov. 18, 2009) (FEC Exh. 47). In 2008, for example, the final recipients of Mr. Eacho's joint fundraising contributions included the Democratic Party of Virginia ($5,232), the Democratic Party of Ohio ($4,306), the Democratic Party of Pennsylvania ($4,139), the Democratic Executive Committee of Florida ($4,664), and the DNC ($28,500). FEC, *William Eacho Individual Contributions*, http://www.fec.gov/finance/disclosure/norindsea.shtml (FEC Exh. 48).

131. In 2013, President Obama nominated George Tsunis, a hotelier, as Ambassador to Norway. During the 2012 presidential cycle, Mr. Tsunis and family members contributed and bundled approximately $1.3 million. *Barack Obama's Bundlers*, OpenSecrets.org, https://www.opensecrets.org/pres12/bundlers.php (FEC Exh. 49). Mr. Tsunis also supported state parties, including by contributing $10,000 to the Democratic Party of Illinois in 2010. FEC, *George Tsunis Individual Contributions*, http://www.fec.gov/finance/disclosure/norindsea.shtml (FEC Exh. 50). He withdrew his nomination following criticism for allegedly bungling questions about the country during his confirmation hearing. *See* Paul Richter, *Obama donor George Tsunis ends his nomination as Norway ambassador*, L.A. Times (Dec. 13, 2014, 7:51 PM), http://www.latimes.com/world/europe/la-fg-norway-ambassador-nominee-withdraws-20141213-story.html (FEC Exh. 51).

132. On April 1, 2015, Senator Robert Menendez of New Jersey and Dr. Saloman Melgen, a Florida-based ophthalmologist, were indicted on twenty-two criminal counts, including bribery and wire fraud. *See* Indictment, *United States v. Menendez*, Cr. No. 15-155, (D.N.J. Apr. 1, 2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/04/01/menendez_and_melgen_indictment.pdf (FEC Exh. 52) ("Menendez Indictment"). According to the Indictment, Senator Menendez and Dr. Melgen

developed a scheme to trade political donations, luxury vacations, and expensive travel for political favors. This included over $750,000 in contributions to party and candidate committees to support Senator Menendez from Dr. Melgen and his family. Menendez Indictment ¶ 46. These favors included intervening on Dr. Melgen's behalf in a contract dispute with the Dominican Republic and a Medicare dispute worth approximately $8.9 million. *See generally* Menendez Indictment; *id.* ¶ 156; *see also* Matt Apuzzo, *Senator Robert Menendez Indicted on Corruption Charges*, N.Y. Times (Apr. 1, 2015), http://www.nytimes.com/2015/04/02/nyregion/senator-robert-menendez-indicted-on-corruption-charges.html (FEC Exh. 53).

133. In April 2012, a Senator Menendez staffer solicited "a big ask" from Dr. Melgen, specifically contributions to the New Jersey Democratic State Committee for use on FEA:

> "I am trying to raise money into the New Jersey Democratic State Committee. The Committee is vital to the Senator's efforts as the state party will conduct voter contact and get out the vote activities on behalf of Senator Menendez and other congressional candidates in the state. The account is named New Jersey Democratic State Committee Victory Federal. The limit per individual is $10,000. Could Dr. Melgen and family members consider giving a total of $40,000?"

Menendez Indictment ¶ 47 (quoting email). Dr. Melgen's staff responded unequivocally; replying, "[r]egarding your request . . . don't worry. We will take care of it. Dr. Melgen will be calling you tomorrow to speak further." Menendez Indictment ¶ 48. On May 16, 2012, about two weeks after the "big ask," Dr. Melgen and his wife contributed $20,000 to the New Jersey Democratic State Committee Victory Fund Account. Menendez Indictment ¶¶ 50-51; FEC, *Report of Receipts and Disbursements (New Jersey Democratic State Committee)* at 10-11 (June 20, 2012) (FEC Exh. 54) (listing the reported dates of receipt as May 18, 2012). The same day, Dr. Melgen's daughter and husband contributed $20,000 to the same committee. (*Id.*) This

contribution was reimbursed by Dr. Melgen through a $20,000 check from his ophthalmology practice to his daughter. Menendez Indictment ¶¶ 50-52. Still on the same day, May 16, 2012, Senator Menendez advocated on Dr. Melgen's behalf in a meeting with the Assistant Secretary of State for the Bureau of International Narcotics and Law Enforcement Affairs regarding the Dominical Republic contract dispute. Menendez Indictment ¶¶ 117, 124.

134. In September and October 2012, Dr. Melgen also contributed over $100,000 to several state and local New Jersey Democratic Party committees, including $16,500 to the Union County Democratic Organization, $37,000 to the Passaic County Democratic Organization, $25,000 to the Camden County Democratic Committee, and $25,000 to the Essex County Democratic Committee. Menendez Indictment ¶ 53. Between 2009 and 2012, Senator Menendez and his staff advocated on Dr. Melgen's behalf in a Medicare billing dispute worth approximately $8.9 million. Senator Menendez was very concerned with determining "who has the best juice at [Centers for Medicare and Medicaid Services] and Dept. of Health." Menendez Indictment ¶ 173. Senator Menendez's staff worked on Dr. Melgen's Medicare dispute extensively. *See* Menendez Indictment ¶ 160; *Senator Robert Menendez Indicted on Corruption Charges* at 3 ("[E]mails show that his staff members conferred with Dr. Melgen regularly. 'As you know we've been working on the Melgen case every day,' one staff member wrote.").

135. Furthermore, in a poll of 1,000 nationally-representative Americans aged 18 and over that was commissioned by the FEC and conducted in February 2016 by YouGov.com, well over 70% of respondents believed that it was at least "somewhat likely" that contributions for the activity plaintiffs seek to do in this case would be made in exchange for political favors. (FEC Exh. 55.) Specifically, when asked to "[i]magine that individuals, corporations, and unions were legally allowed to contribute $100,000 to a state political party and the party used those funds on

its own to get out the vote for a congressional candidate," 42% of respondents said it was "very likely" that such contributions "would be made in exchange for political favors for the donors if the candidate was elected," while 17% said such an outcome was "likely" and 16% said it was "somewhat likely." (*Id.*) When asked to imagine that the state party instead used the money to "run advertisements supporting a congressional candidate," 43% of respondents said it was "very likely" that such contributions "would be made in exchange for political favors for the donors if the candidate was elected," while 20% said such an outcome was "likely" and 14% said it was "somewhat likely." (*Id.*)

136. As political science professor Jonathan Krasno has explained, "[s]hould the plaintiffs prevail here, their victory will bring the national party organizations back into the business of raising soft money by acting through compliant state and local party organizations. This is exactly what happened before and exactly what will happen again, except on a much larger scale." Krasno at 5; *see also id.* at 13 ("Removing the restrictions on state and local parties' use of nonfederal money would quickly restore some of the practices that have largely disappeared since BCRA and eliminate whatever gains in public confidence the law fostered. . . . In short, my view is that overturning the current ban on state and local parties' use of nonfederal funds in federal elections will pose a real cost by increasing the potential for quid pro quo corruption and the appearance of quid pro quo corruption without other benefits to parties or the public.").

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INDEX OF EXHIBITS

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2.	Pl. JPGOP's Responses to FEC's First Set of Discovery Requests ("JPGOP's Disc. Responses")
3.	Pl. OPGOP's Responses to FEC's First Set of Discovery Requests ("OPGOP's Disc. Responses")
4.	*Fletcher's Opinion on the Application of Hatch Act*, N.Y. Times, Aug. 4, 1940
5.	Certification Order, *RNC v. FEC*, No. 14-853 (Docket No. 36) (D.D.C. Sept. 22, 2014) ("*RNC* Certification Order")
6.	Expert Report of Jonathan Krasno (Dec. 23, 2015)
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19.	David Rampe, *Armand Hammer Pardoned by Bush*, N.Y. Times (Aug. 15, 1989)
20.	*See* Marc Lacey, *Political Memo; Resurrecting Ghosts of Pardons Past*, N.Y. Times (Mar. 4, 2001)
21.	David Hoffman, *Bush Signs Pardon for Armand Hammer*, Wash. Post (Aug. 15, 1989)
22.	*Bank Fraud Guilty Plea*, N.Y. Times (June 17, 1988)
23.	Kelly Wallace, *Former President Bush granted last-minute pardon to contributor's son*, CNN (Mar. 7, 2001, 1:57 PM)
24.	Michael Weisskopf, *A Pardon, a Presidential Library, a Big Donation*, Time (Mar. 6, 2001)
25.	H.R. Rep. 110-542 (2008)
26.	James Grimaldi & Susan Schmidt, *Lawmaker From Ohio Subpoenaed in Abramoff Case*, Wash. Post, Nov. 5, 2005

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52.	Indictment, *United States v. Menendez*, Cr. No. 15-155, (D.N.J. Apr. 1, 2015)
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54.	FEC, *Report of Receipts and Disbursements (New Jersey Democratic State Committee)* (June 20, 2012) (excerpt)
55.	2016 YouGov.com Poll

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of March, 2016, I served the unredacted version of FEC's Statement of Material Facts Not in Genuine Dispute, and the sealed exhibits thereto, that were filed with the Court under seal, by sending these materials by email and by First Class Mail to the following counsel:

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