

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

CHRIS RUFER, et al.,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

Case No. 1:14-cv-00837 (CRC)

**REPUBLICAN NATIONAL
COMMITTEE, et al.,**

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

Case No. 1:14-cv-00853 (CRC)

CERTIFICATION ORDER

Committees and officials of the Libertarian and Republican parties brought these related actions challenging the constitutionality of federal party contribution limits as applied to their contemplated non-coordinated campaign expenditures. On August 19, 2014, the Court ruled that constitutional questions presented in Plaintiffs' challenges must be certified to the D.C. Circuit sitting *en banc* under 2 U.S.C. § 437h. Consistent with the procedures outlined in Wagner v. FEC, 717 F.3d 1007, 1009 (D.C. Cir. 2013), the Court ordered the parties jointly to submit proposed constitutional questions to be certified and proposed findings of fact, which they did on September 2, 2014. Having considered the parties' proposals, the Court will certify the questions and make the factual findings set forth below. Because the state and local party committee plaintiffs—the Republican Party of Louisiana, the Jefferson Parish Republican Parish

Executive Committee, and the Orleans Parish Republican Executive Committee—are not permitted to pursue their claims through certification to the D.C. Circuit under 2 U.S.C. § 437h, the Court will stay the claims of those parties pending the decision of the circuit on the certified questions. See 52 U.S.C. § 30110 (formerly 2 U.S.C. § 437h) (listing as parties whose claims may be certified “[the FEC], the national committee of any political party, or any individual eligible to vote in any election for the office of President”).

I. Constitutional Questions

The Court certifies the following questions to the *en banc* Court of Appeals for the D.C. Circuit:

1. Whether 52 U.S.C. §§ 30125(a)–(c) (formerly 2 U.S.C. §§ 441i(a)–(c)) and 52 U.S.C. §§ 30116(a)(1)(B) and (D) (formerly 2 U.S.C. §§ 441a(a)(1)(B), (D)) violate the First Amendment by prohibiting political-party committees from establishing accounts that accept contributions in excess of the FECA contribution limits to fund “independent expenditures”—i.e., expenditures that expressly advocate for the election or defeat of federal candidates but are not coordinated with candidates or their campaigns.
2. Whether 52 U.S.C. § 30125(a) (formerly 2 U.S.C. § 441i(a)) and 52 U.S.C. § 30116(a)(1)(B) (formerly 2 U.S.C. § 441a(a)(1)(B)) violate the First Amendment as applied to national-party committee officers and agents soliciting unlimited contributions for, or directing unlimited contributions to, such accounts.
3. Whether 52 U.S.C. § 30116(a)(1)(D) (formerly 2 U.S.C. § 441a(a)(1)(D)) and 52 U.S.C. §§ 30125(b)–(c) (formerly 2 U.S.C. §§ 441i(b)–(c)) violate the First Amendment as applied to independent federal election activity—i.e., activity that is not coordinated with candidates or their campaigns.

4. Whether 52 U.S.C. §§ 30125(a)–(c) (formerly 2 U.S.C. §§ 441i(a)–(c)) and 52 U.S.C. §§ 30116(a)(1)(B) and (D) (formerly 2 U.S.C. §§ 441a(a)(1)(B), (D)) violate the First Amendment as applied to the establishment of independent expenditure accounts by committees of “minor” or “third” political parties.
5. Whether 52 U.S.C. § 30125(a) (formerly 2 U.S.C. § 441i(a)) and 52 U.S.C. § 30116(a)(1)(B) (formerly 2 U.S.C. § 441a(a)(1)(B)) violate the First Amendment as applied to national-party committee officers and agents of “minor” or “third” political parties soliciting unlimited contributions for, or directing unlimited contributions to such accounts.

II. Findings of Fact

The Court makes the following findings of fact:

A. The Parties

Republican Plaintiffs

1. Plaintiff Republican National Committee (“RNC”) conducts “the general management of the Republican Party, based upon the rules adopted by the Republican National Convention.” The Rules of the Republican Party, RNC, www.gop.com/wp-content/uploads/2014/03/Rules-of-the-Republican-Party.pdf (last visited Sept 17, 2017). RNC is a “national committee,” which “by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level, as determined by the Commission.” 52 U.S.C. § 30101(14) (formerly 2 U.S.C. § 431(14)).¹ RNC also is a national-

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (“FECA”), was transferred from Title 2 of the United States Code to the new Title 52 of the United States Code. See United States Code Editorial Reclassification Table, http://uscode.house.gov/editorialreclassification/t52/Reclassifications_Title_52.pdf.

party committee, i.e. a “political committee[] established and maintained by a national political party” under 52 U.S.C. § 30116(a)(1)(B) (formerly 2 U.S.C. § 441a(a)(1)(B)).

2. Plaintiff Reince Priebus is the RNC Chairman and, in that capacity, serves as the “chief executive officer of the Republican National Committee.” The Rules of the Republican Party at Rule 5(a)(1). He is eligible to vote in an election for the office of the President of the United States.

3. Plaintiff Republican Party of Louisiana (“LAGOP”) is a “state committee;” i.e., “the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the state level, as determined by the Commission.” 52 U.S.C. § 30101(15) (formerly 2 U.S.C. § 431(15)). LAGOP also is a state-party committee; i.e. a “political committee established and maintained by a State committee established and maintained by a state committee of a political party” under 52 U.S.C. § 30116(a)(1)(D) (formerly 2 U.S.C. § 441a(a)(1)(D)).

4. Plaintiff Roger Villere, Jr. is LAGOP’s Chairman. He is eligible to vote in an election for the office of the President of the United States.

Libertarian Plaintiffs

5. Plaintiff Chris Rufer is a registered voter eligible to vote for President. In 2014, he contributed the maximum legally permissible amounts to the LPIN (\$10,000) and to the Libertarian National Congressional Committee Inc. (“LNCC”) (\$32,400). 52 U.S.C. §§ 30116(a)(1)(B), (D) (formerly 2 U.S.C. §§ 441a(a)(1)(B), (D)); Case No. 14-837, Verified Compl. (“Libertarian Compl.”) ¶¶ 9, 70, 78. He resides in Woodland, California.

6. Plaintiff LNCC is a national political party committee of the Libertarian Party with its principal place of business in Oxnard, California. It wishes to establish a separate, segregated independent-expenditure-only (“IE-only”) account that may accept unlimited

contributions for the sole purpose of funding independent expenditures that are not made in coordination with federal candidates or officeholders.

7. Plaintiff LPIN is a state political party committee of the Libertarian Party with its principal place of business in Indianapolis, Indiana. Libertarian Compl. ¶ 7. It wishes to establish an IE-only account that may accept unlimited contributions for the sole purpose of funding independent expenditures that are not made in coordination with federal candidates or officeholders.

Federal Election Commission

8. Defendant Federal Election Commission (“Commission” or “FEC”) is the independent agency of the United States with exclusive jurisdiction over the administration, interpretation, and civil enforcement of the Federal Election Campaign Act. The Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155 (“BCRA”), amended FECA. The Commission is empowered to “formulate policy” with respect to FECA, 52 U.S.C. § 30106(b)(1) (formerly 2 U.S.C. § 437c(b)(1)), and “to make, amend, and repeal such rules . . . as are necessary to carry out the provisions of” FECA. 52 U.S.C. §§ 30107(a)(8), 30111(a)(8), 30111(d) (formerly 2 U.S.C. §§ 437d(a)(8), 438(a)(8), 438(d)). The Commission has exclusive jurisdiction with respect to civil enforcement of FECA. 52 U.S.C. § 30106(b)(1) (formerly 2 U.S.C. § 437c(b)(1)).

B. Plaintiffs’ Intended Conduct

Statutory and Regulatory Background

9. A “political committee” is a group that receives or spends more than \$1,000 during a calendar year for the purpose of influencing federal elections, 52 U.S.C. § 30101(4) (formerly 2 U.S.C. § 431(4)), and has as its “major purpose . . . the nomination or election of a candidate,” Buckley v. Valeo, 424 U.S. 1, 79 (1976) (*per curiam*). Under FECA, individual

contributions to political committees “other” than political party or candidate committees may not exceed \$5,000 in a single year. 52 U.S.C. § 30116(a)(1)(C) (formerly 2 U.S.C. § 441a(a)(1)(C)).

10. Individuals are not permitted to make contributions to national party committees in excess of \$32,400 in a calendar year for any purpose. 52 U.S.C. § 30116(a)(1)(B) (formerly 2 U.S.C. § 441a(a)(1)(B)); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 78 Fed. Reg. 8530–32 (Feb. 6, 2013). Individuals are not permitted to make contributions to state parties in excess of \$10,000 per year for the purpose of making federal contributions or expenditures, or paying for “Federal election activity.” 52 U.S.C. §§ 30125(b), 30116(a)(1)(D), 30101(4), (formerly 2 U.S.C. §§ 441i(b), 441a(a)(1)(D), 431(4)). FECA also limits the amount of expenditures that may be made in coordination with federal candidates or party committee (“coordinated expenditures”), treating them as contributions to the entity on whose behalf they are made. 52 U.S.C. § 30116(a)(7)(B) (formerly 2 U.S.C. § 441a(a)(7)(B)). By comparison, “independent expenditures” under FECA are expenditures “expressly advocating the election or defeat of a clearly identified” federal candidate that are not made in coordination with a candidate or party committee. 52 U.S.C. § 30101(17) (formerly 2 U.S.C. § 431(17)).

11. As relevant here, an “independent expenditure” is 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.” 52 U.S.C. § 30101(17) (formerly 2 U.S.C. § 431(17)). If an individual or entity coordinates with a candidate or her campaign to make an expenditure (a “coordinated expenditure”), that expenditure is considered an in-kind contribution

because it benefits the campaign just as if the individual or entity had donated the good or service directly to the campaign. 52 U.S.C. § 30116(a)(7)(B) (formerly 2 U.S.C. § 441a(a)(7)(B)).

12. Political parties, unlike other entities, are permitted under FECA to coordinate spending with their candidates well-above their contribution limits. 52 U.S.C. §§ 30116(d)(2)–(3) (formerly 2 U.S.C. §§ 441a(d)(2)–(3)). The Act currently allows the national and state committee of a political party each to coordinate spending with a candidate up to \$46,600 or \$93,100 in races for the House of Representatives (depending on whether the state has only one or multiple districts), and up to a range of \$93,100 to \$2,682,200 in races for the Senate (depending on the state’s voting age population). 52 U.S.C. §§ 30116(d)(2)–(3) (formerly 2 U.S.C. §§ 441a(d)(2)–(3)); 78 Fed. Reg. 8530–32 (Feb. 6, 2013). The Act also permitted the national parties to coordinate spending up to \$21,684,200 in the most recent Presidential race. 52 U.S.C. § 30116(d)(2) (formerly 2 U.S.C. § 441a(d)(2)); Price Index Adjustments for Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 77 Fed. Reg. 9925 (Feb. 21, 2012).

13. In 2011, the FEC issued the FEC Statement on Carey v. FEC: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (“Carey Statement”),² which states:

The Commission will no longer enforce 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3),³ as well as any implementing regulations, against any nonconnected political committee with regard to contributions from individuals, political committees, corporations, and labor organizations, as long as (1) the committee deposits the contributions into a separate bank account for the purpose of

² See www.fec.gov/press/press2011/20111006postcarey.shtml.

³ 52 U.S.C. § 30116(a)(1) (formerly 2 U.S.C. § 441a(a)(1)) imposes limits on individual contributions. 52 U.S.C. § 30116(a)(3) (formerly 2 U.S.C. § 441a(a)(3)) imposed aggregate limits, which were held unconstitutional in McCutcheon v. FEC, 134 S.Ct. 1434 (2014).

financing independent expenditures, other advertisements that refer to a Federal candidate, and generic voter drives (the “Non-Contribution Account”), (2) the Non-Contribution Account remains segregated from any accounts that receive source-restricted and amount-limited contributions for the purpose of making contributions to candidates, and (3) each account pays a percentage of administrative expenses that closely corresponds to the percentage of activity for that account.

Id.; Case No. 14-853, Verified Complaint (“Republican Complaint”) ¶ 22.

14. The FEC’s Carey Statement recognizes the right of nonconnected political committees to form NCAs, but party committees are not “nonconnected political committees.” A nonconnected committee is a political committee that is not a party committee, an authorized committee of a candidate, or a separate segregated fund established by a corporation or labor organization. See 52 U.S.C. §§ 30101(4), (5), (6) (formerly 2 U.S.C. §§ 431(4), (5), (6)); 11 C.F.R. §§ 100.5(a), 106.6(a). Thus, the FEC’s statement regarding Carey does not extend to NCAs that would be created by parties such as RNC or LAGOP. Republican Complaint ¶ 25.

Republican Plaintiffs’ Intended Conduct

15. RNC and LAGOP state that they wish to make independent expenditures pursuant to Colorado Republican Federal Campaign Committee v. FEC, 518 U.S. 604 (1996), and wish to create their own NCAs for the independent expenditures, as certain other political committees may do, on the authorization of Plaintiff Priebus for RNC and Plaintiff Villere for LAGOP, subject to all applicable federal laws and regulations. Republican Complaint ¶ 24.

16. At the authorization of Chairman Priebus, RNC states that it will (a) establish an NCA, (b) solicit unlimited contributions for, and direct such contributions to, the NCA, and (c) make only independent expenditures regarding federal candidates and other independent communications that refer to federal candidates from the funds contributed to the NCA. Without the relief requested herein, RNC will not solicit or accept contributions in excess of the limits to fund its independent expenditures. Republican Complaint ¶ 11.

17. Chairman Priebus states that he intends to (a) establish an NCA in RNC, (b) authorize RNC's NCA to make only independent expenditures regarding federal candidates and other independent communications that refer to federal candidates, and (c) solicit unlimited contributions for, and direct such contributions to, RNC's NCA, if it were legal to do so. Without the relief requested herein, he states that he will not solicit or accept contributions in excess of the limits to fund independent expenditures. Republican Complaint ¶ 12.

18. Chairman Priebus and RNC state that they wish to form RNC's NCA as soon as possible and begin soliciting and raising funds without contribution limits in the NCA for making independent expenditures and independent communications naming federal candidates. Priebus and RNC state that they intend in 2014 to use RNC's NCA to conduct this independent activity in select U.S. Senate and House races, and intend in 2016 to conduct this independent activity in select U.S. Senate and House races as well to support the Republican nominee for President. They intend to engage in materially similar independent activity in the future. Republican Complaint ¶ 27.

19. At the authorization of LAGOP Chairman Roger Villere, LAGOP states that it also intends to (a) establish an NCA, (b) solicit unlimited contributions to the NCA, and (c) make only independent expenditures regarding federal candidates and other independent communications that refer to federal candidates from the funds contributed to the NCA, when lawful to do so. Without the requested relief, LAGOP states that it will not solicit unlimited contributions for such activity. In addition, LAGOP states that it intends to use non-federal funds for independent federal election activity in a manner not permitted under current law. Without the requested relief, LAGOP will not do so. Republican Complaint ¶ 13.

20. Chairman Villere states that he intends to (a) authorize LAGOP to establish an NCA, (b) solicit unlimited contributions to the NCA, and (c) make only independent expenditures regarding federal candidates and other independent communications that refer to federal candidates from the funds contributed to the NCA, if it is lawful to do so. Without the requested relief, he states that he will not authorize LAGOP to do so. In addition, he states that he intends to authorize LAGOP to use non-federal funds for independent federal election activity in a manner not permitted under current law. Without the requested relief, he states that he will not authorize LAGOP to do so. Republican Complaint ¶ 14.

21. Plaintiffs Villere and LAGOP state that they want to form LAGOP's NCA as soon as possible and begin soliciting and raising funds without contribution limits in the NCA for making independent expenditures and independent communications naming federal candidates. Villere and LAGOP state that they intend to use LAGOP's NCA in 2014 to conduct this independent activity to support the Republican opponent of U.S. Senator Mary Landrieu, who is up for election in November 2014, as well as selected Republican candidates for Congress. They state that they intend to engage in materially similar independent activity in the future. Republican Complaint ¶ 28.

22. LAGOP states that it wishes to use non-federal funds for independent federal election activity, upon authorization and when legal to do so. LAGOP, states that it will not do so unless it receives the requested relief herein. Republican Complaint ¶ 29.

23. LAGOP states that it wishes to use non-federal funds for independent federal election activity in connection with the 2014, 2015, 2016, and 2017 elections. It states that it wishes to make independent communications to support the Republican opponent of U.S. Senator Mary Landrieu, who is up for election in November 2014, that criticize her support for certain

government policies, such as Obamacare, without expressly advocating her defeat. Contributors to LAGOP are limited by a federal base limit of \$10,000/year, which it must share with district- and local-party committees that are not independent from it, in raising federal funds. 52 U.S.C. § 30116(a)(1)(D) (formerly 2 U.S.C. § 441a(a)(1)(D)); Republican Complaint ¶ 30.

24. In addition, if it receives the requested judicial relief, LAGOP states that it also intends to use non-federal funds in a manner not permitted under current law to conduct other independent federal election activity, such as voter registration, voter identification, get-out-the-vote, and generic campaign activities that would fall within the federal-election-activity definition, in connection with the 2014, 2015, 2016, and 2017 elections. It intends to engage in materially similar activity in the future. VC ¶ 31.

25. Republican Plaintiffs state that they do not presently challenge the ban on corporate and union contributions at 52 U.S.C. § 30118 (formerly 2 U.S.C. § 441b). Republican Complaint ¶ 42 n.12.

Libertarian Plaintiffs' Intended Conduct

26. Plaintiff Chris Rufer has contributed the maximum permissible amount of \$32,400 to the LNCC this year. Rufer also contributed the maximum permissible amount of \$10,000 to the LPIN this year. Rufer states that he supports many of the LNCC's and LPIN's ideological positions, seeks to draw greater public attention to the cause of personal freedom, and wishes to promote the cause of smaller government. Rufer states that he wishes to immediately contribute additional funds to the LNCC and LPIN to subsidize their independent expenditures concerning federal elections, candidates, and campaigns.

27. The LNCC and LPIN have accepted Rufer's contributions, and each state that they wish to accept additional funds from Rufer this year to subsidize their independent

expenditures concerning federal elections, candidates, and campaigns, specifically including independent expenditures each plans to make concerning the upcoming 2014 and 2016 federal elections.

C. The Structure and Operations of the Party Plaintiffs

Republican Plaintiffs

28. 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. See, e.g., L.A. Times, Bush Picks Virginia Governor RNC Chief, Sources Say, Dec. 22, 2000, <http://articles.latimes.com/2000/dec/22/news/mn-3399>; CBSNews, Bush Picks new GOP Chairman, Dec. 4, 2001, <http://www.cbsnews.com/news/bush-picks-new-gop-chairman/>.

29. The RNC holds a nominating convention every four years where its Presidential candidate is selected. A section of the convention hall is restricted to delegates, officers of the convention, members of the Republican National Committee and incumbent Republican governors, incumbent Republican United States Senators, and incumbent Republican members of the United States House of Representatives. The Rules of the Republican Party at Rule No. 28(a).

30. Among other powers, the RNC can select the Republican candidate for President of the United States or Vice President of the United States in the event that the candidate nominated at the national convention dies, declines the nomination, or otherwise decides not to pursue the office. The Rules of the Republican Party at Rule No. 9(a). The RNC has the power to unseat any member who refuses to support the Republican nominee for President of the

United States or Vice President of the United States. Id. at Rule No. 4(b). The RNC also writes the rules that govern Republican nomination campaigns. Id. at Rule No. 13.

31. 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) (formerly 2 U.S.C. § 441a(a)(4)).

32. The NRSC is directly governed by Republican U.S. Senators—its current officers are Senator Jerry Moran, Chairman; Senator Rob Portman, Vice Chairman for Finance; and Senator Ted Cruz, Vice Chairman for Grassroots Outreach. About, NRSC, <http://www.nrsc.org/about> (last visited Sept 17, 2014). The NRCC is directly governed by Republican U.S. House members—its current chairman is Congressman Greg Walden, who serves with an executive committee composed of Republican members of the U.S. House of Representatives. The Chairman of the NRCC is elected by the House Republican Conference after each Congressional election. House Speaker John Boehner and the seven other elected leaders of the Republican Conference of the House of Representatives serve as ex-officio members of the NRCC’s executive committee. Id.

33. “In practice, electing . . . candidates is the RNC’s primary focus.” McConnell v. FEC, 251 F. Supp. 2d 176, 470 (D.D.C. 2003) (procedural history omitted). Republican Senator John McCain has testified that “[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) (citing Senator McCain’s declaration in McConnell). Former RNC Chairman Haley

Barbour stated in 1996: “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.”). Cao, 688 F. Supp. 2d at 507 (citing documentary evidence from McConnell).

34. The RNC participates in electoral and political activities at the federal, state, and local levels. The RNC supports federal, state, and local candidates. Cao, 688 F. Supp. 2d at 507 (citing complaint and joint stipulation in that case).

35. 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.

36. 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).

37. 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).

38. 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>.

39. 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.

40. 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).

41. 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.

42. 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) (formerly 2 U.S.C. § 441a(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) (formerly 2 U.S.C. § 441a(d)(3)); 11 C.F.R. § 109.33(a).

43. 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).

44. The Bylaws Committee of LAGOP considers and reports to the State Central Committee regarding such federal issues as “the endorsement of candidates,” “the selection of delegates to the Republican National Convention,” and “the conduct of Presidential caucuses or primaries.” LAGOP Bylaws, Art VII § 1.

45. 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.”).

46. 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).

47. 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).

Libertarian Plaintiffs

48. The LNCC is a national committee of the Libertarian party. The Libertarian Party’s other national committee is the Libertarian National Committee, Inc. (“LNC”). Libertarian Compl. ¶ 8; Libertarian Nat’l Comm. v. FEC, 930 F. Supp. 2d 154, 171–90 ¶ 1 (D.D.C. 2013) (Appendix, Findings of Fact (“LNC Findings”)).

49. The LNCC and the LNC can transfer unlimited sums to each other, or to state political committees such as LPIN. 52 U.S.C. § 30116(a)(4) (formerly 2 U.S.C. § 441a(a)(4)).

Those state committees may likewise transfer unlimited sums to the national committees. Id.

50. The Libertarian Party was founded in 1971. LNC Findings ¶ 5; Libertarian Party, Our History, <http://www.lp.org/our-history> (last visited Aug. 27, 2014).

51. The Libertarian Party is conventionally and colloquially referred to as a “third party” or “minor party.”

52. No elected federal official is currently a member of the Libertarian Party, or otherwise affiliated with LNCC or LPIN.

53. No member of the Libertarian Party, or person otherwise affiliated with LNCC or LPIN ever has been elected President, Vice President, U.S. Senator, or U.S. Representative.

54. In the past half-century, there has never been a President or Vice President who was a member of any “third party” or “minor party.”

55. According to the U.S. Senate Historical Office, in the past half-century, there has been only one member of any “third party” or “minor party” elected to the U.S. Senate: Senator James Buckley (NY), Conservative Party, 1971-1977. During the same period, there were seven

56. Senators who were elected as “Independents” unaffiliated with any political party at all (including one who later became an “Independent Democrat”). Additionally, Senator Dean M. Barkley, a member of the Minnesota Reform Party, was appointed by Governor Jesse Ventura to serve as U.S. Senator for two months, from November 5, 2002 to January 2, 2003. Senators Representing Third or Minor Parties, United States Senate, https://www.senate.gov/artandhistory/history/common/briefing/senators_thirdParties.htm (last visited Sept. 4, 2014); Party Division in the Senate, 1789–Present, United States Senate, https://www.senate.gov/pagelayout/history/one_item_and_teasers/partydiv.htm (last visited Sept. 4, 2014).

57. According to the Clerk of the U.S. House of Representatives, in the past half-century, not a single member of any “third party” or “minor party” was elected or appointed to the House of Representatives. Representative Norman F. Lent (NY-4), who served from 1971-1993, was nominated by both the Republican Party and Conservative Party. Throughout most of this period, no Representative was an “Independent” unaffiliated with either party. From 1991-2007, there was one (and occasionally two) Independent member(s). Party Divisions of the House of Representatives, 1935–Present, United States House of Representatives, <http://history.house.gov/Institution/Party-Divisions/74-Present/> (last visited Sept. 4, 2014); Election Statistics, United States House of Representatives, <http://history.house.gov/Institution/Election-Statistics/Election-Statistics/> (last visited Sept. 4, 2014).

58. In the 2012 elections, not a single Libertarian candidate running for the U.S. Senate or U.S. House prevailed. Across the entire country, only seven Libertarian candidates for federal office received more than 10 percent of the vote; the substantial majority of Libertarian candidates for federal office received less than 5 percent. 2012 Election Results, Libertarian Party, <http://www.lp.org/2012-election-results> (last visited Sept. 4, 2014).

59. In 2012, the LPIN nominated the following individuals to run for U.S. Congress and they received the specified percentages of the vote:

- a. Andrew Horning (Senate), 5.8%
- b. Joe Ruiz (Dist. 2), 3.4%
- c. Benjamin Gehlhausen (Dist. 4), 3.9%
- d. Chard Reid (Dist. 5), 4.0%
- e. Rex Bell (Dist. 6), 5.8%

f. Bart Gadau (Dist. 8), 3.6%.

60. The LNCC is the Libertarian Party's national congressional campaign party committee. Among other things, it supports Libertarian candidates in races for the U.S. House of Representatives. Libertarian Compl. ¶ 38. The LNCC "is dedicated to . . . recruiting, training and supporting Libertarian candidates for political office" and "getting them elected." About the LNCC, LNCC, <http://www.lncc.org/about/> (last visited August 27, 2014).

61. The LNC, the Libertarian Party's other national committee, has approximately 14,500 current dues paying members, in all 50 states and the District of Columbia. LNC Findings ¶ 3. Approximately 278,446 registered voters identify with the Libertarian Party in the 25 states in which voters can register as Libertarians. Id. The LNC's purpose is to field national Presidential tickets, support its state party affiliates in running candidates for public office, and conduct other political activities in furtherance of a libertarian public policy agenda in the United States. LNC Findings ¶ 4.

62. The LPIN is one of the Libertarian Party's state party committees. Libertarian Compl. ¶ 7. The LPIN's purpose "is to move public policy in a libertarian direction by electing candidates of the Libertarian Party to public office." About, Libertarian Party of Indiana, <http://lpin.org/about/> (last visited Aug 27, 2014). "The primary functions of the LPIN are to: (a) nominate and run candidates for statewide, state legislative and U.S. Congressional offices in the state of Indiana, (b) serve as an affiliate organization of the national Libertarian Party, and (c) charter and serve the needs of affiliated County Organizations throughout the state of Indiana." Libertarian Party of Indiana, LPIN By-Laws § 4 (Feb. 2014); see also Cao v. FEC, 688 F. Supp. 2d 498, 506-33 (E.D. La. 2010) ¶ 93 ("Cao Findings") ("One of the purposes of state party committees . . . is to assist in the election of candidates for federal office.").

63. The LPIN was formed in 1974, and has maintained ballot access since 1994. About, Libertarian Party of Indiana, <http://lpin.org/about/> (last visited Aug. 27, 2014).

64. Over 50 Libertarian candidates are presently running for Congress in districts throughout the nation in 2014. Libertarian Compl. ¶ 40. In 2012, dozens of Libertarian candidates ran for the U.S. House of Representatives and Senate across the country. Id. ¶ 39. There are currently at least three elected Libertarian officials in the State of Indiana: Susan Bell, Town Judge of Hagerstown; Cheryl Heacox, Clay Township Advisory Board; and Steve Coffman, Liberty Township Advisory Board. Id. ¶ 54.

65. In 2012, Libertarian candidates in the State of Indiana ran for President and Vice President (Gary Johnson and Jim Gray); U.S. Senate (Andrew Homing); and U.S. House of Representatives from five congressional districts. Libertarian Compl ¶ 55. In 2010, Libertarian candidates in the State of Indiana ran for U.S. Senate (Rebecca Sink-Burris) and U.S. House of Representatives from all nine congressional districts in the state. Senate candidate Rebecca Sink-Burris received 91,943 votes (5.33%) statewide, while congressional candidate Chard Reid received 18,203 votes (7.74%) from his district. Id. ¶ 55. Eighteen Libertarians have been elected to municipal or county partisan office in Indiana. Elected Libertarians, Libertarian Party of Indiana, <http://lpin.org/about/elected-libertarians/> (last visited Aug. 27, 2014).

66. “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).

67. For example, the LNCC actively recruits candidates for the Libertarian Party, telling prospective candidates on its website that if they are “ready to make a stand with us as a candidate for public office, we’re here to help you.” Ready to take a personal stand for liberty & America’s future? Become a Libertarian candidate for office!, Libertarian National Campaign Committee, <http://www.lncc.org/runforoffice/> (last visited August 27, 2014); Cao Findings ¶ 76 (“Party organizations recruit candidates.”).

68. The LPIN also actively recruits candidates for the Libertarian Party by urging individuals to run for political office: “Over the last 30 years, the Libertarian Party has built a solid base of voters in every corner of Indiana. These voters deserve to have candidates who represent their views on the ballot in 2014. This is not possible if regular citizens like you do not step up and stump for our core principles and for the Constitutions of Indiana and of the United States.” Run for Office, Libertarian Party of Indiana, <http://lpin.org/run-for-office/> (last visited Aug. 27, 2014).

69. The LPIN conducts training seminars for Libertarian Party candidates. See, e.g., Candidate Training, Libertarian Party of Indiana, <http://lpin.org/run-for-office/candidate-training/> (video of candidate training session) (last visited Aug. 27, 2014).

70. The LNCC and the LPIN, like other “[p]arty organizations,” thus “also assist general election candidates with their campaigns, providing many with money, political expertise, media and other election services, volunteers, and some of the other resources that are needed to wage an election campaign. Parties also help candidates collect money and other campaign resources from interest groups and individuals who are active in politics. In addition, party organizations communicate messages designed to benefit a party’s entire ticket or intended to help individual candidates win their races.” Cao Findings ¶ 76.

D. Current Conduct of Raising and Spending Money By the Parties

Republican Plaintiffs

71. RNC and LAGOP state that they regularly receive contributions from individuals and will continue to do so. RNC and LAGOP state that they regularly make independent expenditures regarding federal candidates and other independent communications that refer to federal candidates and will continue to do so.

72. RNC's independent-expenditure activity currently must use funds subject to RNC's base contribution limit. See 52 U.S.C. § 30116(a)(1)(B) (formerly 2 U.S.C. § 441a(a)(1)(B)) (currently \$32,400/year). LAGOP's independent-expenditure activity currently must use funds subject to LAGOP's base contribution limit. See 52 U.S.C. § 30116(a)(1)(D) (formerly 2 U.S.C. § 441a(a)(1)(D)) (currently \$10,000/year, with limit shared between state, district, and local parties within a state if the district and local parties are not independent from the state parties).

73. In the 2011–2012 election cycle, the Republican national party committees (the RNC, NRSC, and 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 limitation or prohibitions of FECA. Compare FEC, National Political Party Summary (Aug. 25, 2014), <http://www.fec.gov/disclosure/partySummary.do> (select Party Financial Activity Data for 2012), with FEC, Candidate and Committee Viewer, http://www.fec.gov/finance/disclosure/candcmt_e_info.shtml (off-year 1998 cycle receipts for RNC, NRSC, and NRCC, committee Nos. C00003418, C00027466, C00075820).

74. In each of the last three two-year election cycles, the Republican national party committees have raised hundreds of millions of dollars. FEC, National Political Party Summary

(Aug. 25, 2014), <http://www.fec.gov/disclosure/partySummary.do>. (select Party Financial Activity Data). In the 2008 election cycle, the Republican national party committees raise \$477,296,204. Id. In the 2010 election cycle, the Republican national party committees raised \$372,350,238. Id. In the 2012 election cycle, the Republican national party committees raised \$432,542,407. Those party committees also reported transfer activity. In the 2008 cycle the Republican national party committees reported making \$59,476,828 in transfers and receiving \$188,592,366 in transfers. Id. In the 2010 cycle the Republican national party committees reported making \$56,414,451 in transfers and receiving \$138,128,778 in transfers. Id. In the 2012 cycle the Republican national party committees reported making \$33,493,608 in transfers and receiving \$26,104,525 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) (formerly 2 U.S.C. § 441a(a)(4)). Thus, they involve the movement of funds already raised subject to contribution limits of the recipient entity within a political party and not additional contributions to the political party as a whole.

75. In each of the last three two-year election cycles, the RNC has raised well over a hundred million dollars. FEC, Candidate and Committee Viewer (Aug. 26, 2014) (results for committee ID C00003418). In the 2008 election cycle, the RNC raised \$286,111,958. Id. In the 2010 election cycle, the RNC raised \$167,444,211. Id. In the 2012 election cycle, the RNC raised \$225,673,440. Id. In each of the last three two-year election cycles, the LAGOP has raised hundreds of thousands of dollars for its federal committee. FEC, Candidate and Committee Viewer (Aug. 26, 2014) (results for committee ID C00187450). In the 2008 election cycle, the LAGOP raised \$757,887 and received \$216,637 in transfers from other committees.

Id. In the 2010 election cycle, the LAGOP raised \$790,724 and received \$125,774 in transfers from other committees. Id. In the 2012 election cycle, the LAGOP raised \$388,605 and received \$69,465 in transfers from other committees. Id. In addition, the LAGOP has raised funds for its Louisiana committee. See generally Louisiana Ethics Administration Program, Electronically Filed Reports for Political Action Committee: Republican Party of Louisiana, <http://www.ethics.state.la.us/CampaignFinanceSearch/ViewEFiler.aspx?FilerID=PAC990126> (linking to LAGOP's Louisiana campaign-finance reports) (last visited August 28, 2014).

76. In the 2012 cycle, the Republican national committees contributed \$1,679,323 to their federal candidates. National Political Party Summary, FEC, <http://www.fec.gov/disclosure/partySummary.do> (last visited Aug. 25, 2014) (select Party Financial Activity Data).

77. During each of the last three two-year election cycles, the Republican national party committees have made millions of dollars of expenditures in coordination with federal candidates. Id. In the 2008 cycle the Republican national party committees made \$29,807,803 in coordinated expenditures. Id. In the 2010 cycle the Republican national party committees made \$24,485,161 in coordinated expenditures. Id. In the 2012 cycle the Republican national party committees made \$34,728,546 in coordinated expenditures. Id.

78. During the last three two-year election cycles, Republican national committees have spent tens of millions of dollars on independent campaign expenditures. Republican national party committees made \$123,334,212 of independent expenditures in 2008, \$72,146,480 of independent expenditures in 2010, and \$139,392,222 of independent expenditures in 2012. Id.

79. In the 2008 cycle, the RNC supported its federal candidates with \$524,495 in contributions, \$24,856,861 in coordinated expenditures, and \$53,459,388 in independent

expenditures. Id. In the 2010 cycle, the RNC supported its federal candidates with \$60,768 in contributions, \$1,060,753 in coordinated expenditures, and no independent expenditures. Id. In the 2012 cycle, the RNC supported its federal candidates with \$264,436 in contributions, \$22,306,013 in coordinated expenditures, and \$42,394,347 in independent expenditures. Id. In the 2008 cycle, the LAGOP supported its federal candidates by making \$ 4,760 in contributions and \$57,995 in coordinated expenditures, and no independent expenditures. FEC, Candidate and Committee Viewer (Aug. 26, 2014) (results for committee ID C00187450). In the 2010 cycle, the LAGOP supported its federal candidates with \$3,000 in contributions, \$445,004 in coordinated expenditures, and no independent expenditures. Id. In the 2012 cycle, the LAGOP supported its federal candidates with \$5,450 in contributions and made no coordinated expenditures or independent expenditures. Id.

80. LAGOP previously has assigned its coordinated expenditure amounts to the RNC, so candidates can potentially receive the maximum coordinated expenditures even when LAGOP lacks the resources to pay for those expenditures. Caq, 688 F. Supp. 2d at 513 (citing 30(b)(6) depositions of RNC and LAGOP in that case and a letter assigning coordinated expenditures from LAGOP to RNC).

Libertarian Plaintiffs

81. In the two-year election cycle ending in 2008, the LNCC raised \$13,764. FEC, Candidate and Committee Viewer (Aug. 27, 2014) (results for committee ID C00418103). In the 2010 election cycle, the LNCC raised \$13,818. Id. In the 2012 election cycle, the LNCC raised \$45,820 and received \$50,000 in transfers from other federal political committees. Id.

82. In the 2008 cycle, the LNCC did not make contributions to federal political committees, made no independent expenditures, and made no party coordinated expenditures.

FEC, Candidate and Committee Viewer (Aug. 27, 2014), (results for committee ID C00418103). In the 2010 cycle the LNCC likewise made no independent expenditures or party coordinated expenditures, but made \$3,000 in contributions to other committees.

83. Between January 1, 2013 and June 30, 2014 (an 18-month period), the LNCC received a total of \$81,700, spent \$83,532, and ended the period with \$10,834 cash on hand. In the 2008 election cycle, the LPIN's federal committee raised \$55,386. FEC, Candidate and Committee Viewer (Aug. 26, 2014) (results for committee ID C00426320). In the 2010 election cycle, that committee raised \$82,764. Id. In the 2012 election cycle, it raised \$78,173. Id. In each of those election cycles, the LPIN also raised money under state law for a committee registered with the state of Indiana. See generally Committee Detail, Indiana Election Division (2014), <http://campaignfinance.in.gov/PublicSite/SearchPages/CommitteeDetail.aspx?OrgID=790>.

84. In the 2008 cycle, the LPIN made \$1,000 in contributions to federal political committees, made no federal independent expenditures, and made no federal party coordinated expenditures. FEC, Candidate and Committee Viewer (Aug. 28, 2014) (results for committee ID C00426320). In the 2008 and 2010 cycles, LPIN made no federal contributions, independent expenditures, or party coordinated expenditures.

85. Between January 1, 2013 and June 30, 2014 (an 18-month period), the LPIN's federal committee received a total of \$80,750, spent \$50,918, and ended that period with \$32,137 cash on hand.

E. Relevant Legislative Background

86. 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).

87. Congress established limits on individual contributions to political candidates and their committees in the 1940 amendments to the Hatch Act, Pub. L. No. 76-753, 54 Stat. 767 (1940). The 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 state and local parties. See 86 Cong. Rec. 2852–2853 (1940) (amending bill to exempt state and local parties from contribution limit).

88. In 2002, Congress passed BCRA, which included a provision prohibiting the national parties from receiving or spending any “soft money”—money that was not subject to the limitation or prohibitions of FECA—and also generally barred the use of such funds in federal elections by state or local parties. 52 U.S.C. § 30125(a) (formerly 2 U.S.C. § 441i(a)).

III. Certification

The Court, therefore, ORDERS that the above constitutional questions and findings of fact are hereby CERTIFIED to the *en banc* Court of Appeals for the District of Columbia Circuit.

SO ORDERED.

CHRISTOPHER R. COOPER
United States District Judge

Date: September 22, 2014