United States District Court
District of Columbia

Republican National Committee et al., ***Plaintiffs***, ***v.*** **Federal Election Commission**, ***Defendant.***	**Case No.** 08-1953 (BMK, RJL, RMC) THREE-JUDGE COURT

Plaintiffs' Summary Judgment Motion

Plaintiffs Republican National Committee ("RNC"), Robert M. "Mike" Duncan, California Republican Party, and Republican Party of San Diego County respectfully move for summary judgment on all counts contained in their complaint.

In support of this motion, Plaintiffs file their *Memorandum in Support of Plaintiffs' Summary Judgment Motion*, *Plaintiffs' Statement of Undisputed Material Facts* ("SUF"), and supporting affidavits. (Exhibits 1-5). A draft order is provided. LCvR 7(c). Oral argument on this motion is requested. LCvR 7(f).

Respectfully submitted,

/s/ James Bopp, Jr.

James Bopp, Jr., Bar #CO0041
Richard E. Coleson*
Clayton J. Callen*
Kaylan L. Phillips*
BOPP, COLESON & BOSTROM
1 South Sixth Street
Terre Haute, IN 47807-3510
812/232-2434 telephone
812/234-3685 facsimile
Lead Counsel for all Plaintiffs
*Pro Hac Vice

Charles H. Bell, Jr.*
Bell, McAndrews & Hiltachk, LLP
455 Capitol Mall, Suite 801
Sacramento, CA 95814
Tel: (916) 442-7757
Fax: (916) 442-7759
cbell@bmhlaw.com
Counsel for California Republican Party and Republican Party of San Diego County

United States District Court
District of Columbia

Republican National Committee et al., ***Plaintiffs***, ***v.*** **Federal Election Commission**, ***Defendant.***	**Case No.** 08-1953 (BMK, RJL, RMC) THREE-JUDGE COURT

Memorandum in Support of Plaintiffs' Motion for Summary Judgment

---

Respectfully submitted,

/s/ James Bopp, Jr.

James Bopp, Jr., Bar #CO0041
Richard E. Coleson*
Clayton J. Callen*
Kaylan L. Phillips*
BOPP, COLESON & BOSTROM
1 South Sixth Street
Terre Haute, IN 47807-3510
812/232-2434 telephone
812/234-3685 facsimile
Lead Counsel for all Plaintiffs
*Pro Hac Vice

Charles H. Bell, Jr.*
Bell, McAndrews & Hiltachk, LLP
455 Capitol Mall, Suite 801
Sacramento, CA 95814
Tel: (916) 442-7757
Fax: (916) 442-7759
cbell@bmhlaw.com
Counsel for California Republican Party and Republican Party of San Diego County

Table of Contents

Table of Authorities

Cases

Statutes, Regulations and Constitutional Provisions

Other Authorities

Introduction

Just as *FEC v. Wisconsin Right to Life*, 127 S. Ct. 2652 (2007) ("*WRTL II*"), was an as-applied challenge to a prohibition in the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. No. 107-155, 116 Stat. 81, 91-92 (codified at 2 U.S.C. § 441b(b)(2)), that *McConnell v. FEC*, 540 U.S. 93 (2003), had facially upheld, this is also an as-applied challenge to another BCRA prohibition that *McConnell* facially upheld. In both instances, the prohibitions are unconstitutional as applied to specific fact patterns.

McConnell facially upheld the prohibition on corporate electioneering communications, *id*. at 203-09, but *WRTL II* subsequently held that it could only be applied to those electioneering communications that are "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate," *WRTL II*, 127 S. Ct. at 2667.[1] As explained in Part I-B below, this appeal-to-vote test was the latest application of a constitutional first principle recognized in *Buckley v. Valeo*, 424 U.S. 1 (1976), namely, that to avoid unconstitutional overbreadth all campaign laws may regulate only activity "unambiguously related to the campaign of a particular federal candidate." *Id.* at 80. In short, they must be "unambiguously campaign related." *Id.* at 81.

McConnell also facially upheld the Federal Funds Restriction (BCRA § 101, codified at 2 U.S.C. § 441i), *McConnell*, 540 U.S. at 133-89, which bans *national* committees of a political

[1]The cited opinion is by Chief Justice Roberts, joined by Justice Alito. As the controlling *WRTL II* opinion, it states the holding of the Court. *See Marks v. United States*, 430 U.S. 188, 193 (1977) ("When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, 'the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds . . . .'" (citation omitted)).

party and its officials from soliciting or using *any* non-federal funds,[2] regardless of their purpose. They may solicit and use only federal funds. 2 U.S.C. § 441i(a).

The Federal Funds Restriction also bans *state* committees of a political party from using non-federal funds for "federal election activity." *Id.* § 441i(b). "Federal election activity" includes: (1) voter registration activity in the 120 days before a federal election; (2) "voter identification, get-out-the-vote activity or generic campaign activity" in connection with elections for federal office; and (3) public communications[3] that clearly identify and "promote," "attack," "support," or "oppose" ("PASO") a federal candidate. *Id.* § 431(20).

This Federal Funds Restriction is unconstitutional as applied to Plaintiffs' planned activities, because these activities are not unambiguously related to the campaign of any federal candidate, and so are beyond Congress's authority to regulate and are protected by the First Amendment.

Facts

The facts are from *Plaintiffs' Statement of Undisputed Material Facts* ("SUF") and the *McConnell* district court's findings of fact regarding Plaintiffs. *McConnell v. FEC*, 251 F. Supp.2d 176 (D.D.C. 2003). Plaintiff Republican National Committee ("RNC") is responsible

[2] "Federal funds" are those complying with federal limits, bans, and reporting requirements. 11 C.F.R. § 300.2(g). "Non-federal funds" are those that do not comply with federal limits and bans. *Id.* § 300.2(k). Depending on how a state's law compares with federal law, money raised under state law may or may not be "non-federal." As used in this brief, however, the term "state funds" – which, unlike "federal funds" and "non-federal funds," is not a term of art – means *non-federal* funds *that comply with the law of the state in question.*

[3] *Defined in* 2 U.S.C. § 431(22) *and* 11 C.F.R. § 100.26.

for "the general management of the Republican Party, subject to direction from the national convention." SUF ¶ 1. It is a "national committee of a political party" under 2 U.S.C. § 441i(a):

> As a national political party committee, the RNC has historically participated and participates today in electoral and political activities at the federal, state and local levels. The RNC seeks to advance its core principles by advocating Republican positions, electing Republican candidates and encouraging governance in accord with Republican views at the federal, state and local levels.

McConnell, 251 F. Supp.2d at 335 (citations omitted) (Judge Henderson's findings). The RNC "has historically participated and participates today in electoral and political activities at the federal, state and local levels." *Id.* These activities in state and local elections "are substantial both in their importance to the RNC's mission and in their resource commitment." *Id.* "Even for elections in which there is no federal candidate on the ballot, the RNC trains state and local candidates, donates to state and local candidate campaign committees, funds communications calling for the election or defeat of state and local candidates and engages in get-out-the-vote activities." *Id.* at 336.

Plaintiff California Republican Party is the state Republican party in California. It is "a State . . . committee of a political party" under 2 U.S.C. § 441i(b)(1). SUF ¶ 2. Plaintiff Republican Party of San Diego County is a "local committee of a political party" under 2 U.S.C. § 441i(b)(1). SUF ¶ 3. Plaintiff Robert M. "Mike" Duncan is the national committeeman of the Kentucky Republican party and the RNC chairman. As such, he is the RNC's chief executive officer. SUF ¶ 4. Defendant Federal Election Commission ("FEC") enforces the Federal Election Campaign Act, 2 U.S.C. § 431 *et seq.* ("FECA"). *Id.* § 437c(b)(1). SUF ¶ 5.

The RNC intends to (a) create a **New Jersey Account** and a **Virginia Account** for state funds, (b) solicit funds into these accounts under state law, and (c) use those state funds for state

election activities for the November 2009 election. There will be no federal candidates on the 2009 New Jersey or Virginia ballot. These state election activities include get-out-the-vote ("GOTV") mail, voter-registration drives, direct contributions to state candidates, and media advertising supporting or opposing state candidates. SUF ¶¶ 8-12.

The RNC intends to (a) create a **Redistricting Account** for non-federal funds and state funds, (b) solicit funds into the account under applicable state laws, and (c) use those state funds to support the redistricting efforts of the Republican parties in various states after the 2010 census. From this account, the RNC intends to provide logistical support to the parties and individuals involved in redistricting. Examples of such support include computer hardware and software, data processing, map drawing, support or opposition to related state initiatives, and litigation. SUF ¶¶ 13-14.

The RNC intends to (a) create a **Grassroots Lobbying Account** for non-federal funds, (b) solicit non-federal funds into the account, and (c) use those funds to support grassroots lobbying efforts for federal legislation and issues important to the Republican party's platform. The RNC would use this account for public communications encouraging grassroots activity, educational initiatives concerning legislation and issues, and staff assistance for state parties to mobilize grassroots support. The RNC has developed scripts for two grassroots lobbying radio advertisements that it wishes to broadcast with funds from this Account. SUF ¶¶ 15-16.

The RNC intends to (a) create several **State Elections Accounts** for state funds, (b) solicit state funds into the account, and (c) use those funds exclusively for state election activities in various states. The RNC would solicit and spend the funds according to state law. These state-election activities include GOTV mail, voter registration drives, direct contributions to state

candidates, and media advertising supporting or opposing state candidates. The RNC intends to pay for state election activities from this account in elections where only state candidates are on the ballot and in elections where both federal and state candidates are on the ballot. None of these state activities would identify, reference, or otherwise depict any federal candidate. SUF ¶¶ 18-19.

The RNC intends to solicit non-federal funds into a **Litigation Account** solely for paying the fees and expenses of this case and costs associated with other litigation not involving federal elections. SUF ¶ 20. The RNC also intends to solicit non-federal funds into a **Building Account** to be used for maintenance and upkeep expenses associated with RNC's headquarters. SUF ¶ 21.

Chairman Duncan, in his official capacity as RNC chairman, intends to **(1)** solicit contributions of state funds and non-federal funds to RNC's New Jersey Account, Virginia Account, Redistricting Account, Grassroots Lobbying Account, State Elections Accounts, Building Account, and Litigation Account; **(2)** solicit contributions of state funds to the California Republican Party; and **(3)** solicit contributions of state funds to the campaigns of Republican candidates for state office on the November 2009 ballots in New Jersey and Virginia. Chairman Duncan intends to make these solicitations by (1) attending and being a featured guest at events/fundraisers; (2) signing letters and emails soliciting such contributions from RNC contributors and other potential contributors; and (3) making telephone calls to solicit contributions from RNC contributors and other potential contributors. SUF ¶¶ 27-29.

The RNC will not aid contributors to any of the Accounts in obtaining preferential access to federal candidates or officeholders. For example, the RNC will not, in any manner different than or beyond that currently afforded to contributors of federal funds, (1) encourage officehold-

ers or candidates to meet with or have other contact with contributors to these accounts, (2) arrange for contributors to participate in conference calls with federal candidates or officeholders, or (3) offer access to federal officeholders or candidates in exchange for contributions. Furthermore, the RNC will not use any federal candidates or officeholders to solicit funds for any of the Accounts. SUF ¶¶ 24-30.

The California Republican Party and the Republican Party of San Diego County (collectively "CRP") intend to use state funds for public communications to support or oppose California ballot initiatives. *See* 2 U.S.C. § 431(22) (defining "public communication"); 11 C.F.R. § 100.26 (same). SUF ¶ 63. The CRP frequently engages in ballot-measure activity, endorsing and opposing such measures. SUF ¶¶ 46, 48, 59. These ballot measure activities are enhanced by associating Democratic federal candidates and officeholders with ballot measures that the CRP opposes, and by associating Republican candidates and officeholders with ballot measures that the CRP supports. SUF ¶¶ 47-61. In addition, referring to federal candidates on direct-mail fundraising appeals enhances their effectiveness. The CRP has developed a fundraising letter (the "Letter") supporting the qualification of a California state ballot initiative to reform the way redistricting is done. Although FECA defines neither "attack" nor "oppose," *see* 2 U.S.C. § 431(20)(A)(iii), the CRP believes its public communications will "attack" or "oppose" federal candidates, so it must pay for its communications with federal funds. *See id.* § 441i(b)(1). The CRP also intends to use state funds for voter registration, voter identification, GOTV, and "generic campaign activity"[4] in future elections where both state and federal candidates are on

[4] *Defined in* 2 U.S.C. § 431(21).

the ballot. None of these activities will identify, reference, or otherwise depict any federal candidate. SUF ¶¶ 45,62.

Plaintiffs are ready and able to undertake all of these intended activities, but the Federal Funds Restriction makes them a crime. If Plaintiffs do not obtain judicial relief, they will not proceed with their planned activities. In regard to all of the above activities, Plaintiffs intend to solicit and use state funds and non-federal funds in materially similar situations in the future, if permitted. There is a strong likelihood that similar situations will recur, given that Plaintiffs have engaged in similar activity in the past and that such activity relating to state-candidate elections, ballot initiatives, redistricting, grassroots lobbying, and litigation is common and regularly recurring. SUF ¶¶ 23, 31, 45, 60, 62, 63.

Argument

Summary judgment "should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The undisputed fact pattern is simple—the Federal Funds Restriction bans Plaintiffs from undertaking their intended activities. The issues are purely legal, and Plaintiffs are entitled to summary judgment.

I. Campaign Finance Restrictions Must Be "Unambiguously Campaign Related" and Properly Tailored to a Sufficient Interest.

A. First Principles

Constitutional analysis begins with the Constitution, including the First Amendment. *See WRTL II*, 127 S. Ct. at 2674 ("Yet, as is often the case in this Court's First Amendment opinions, we have gotten this far in the analysis without quoting the Amendment itself: 'Congress shall

make no law ... abridging the freedom of speech.' The Framers' actual words put the[] cases in proper perspective. Our jurisprudence ... has rejected an absolutist interpretation of those words, but ... it is worth recalling the language we are applying."). Even before the First Amendment come the separation of powers, *see, e.g.*, *Morrison v. Olson*, 487 U.S. 654, 697-99 (1988) (Scalia, J., dissenting), and the limited and enumerated powers of the federal government. *See, e.g.*, U.S. CONST. art. I, § 8; *id.* amend. X; *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819). Even before these principles comes "the struggle of the Anglo-American people to (a) establish themselves as sovereign and (b) curb the power of government officials to prevent the people from criticizing official actions." *WRTL II*, No. 06-969 & 06-970, Appellee's Br. at 1 (U.S. March 22, 2007).[55] Centuries of history are replete with ill begotten efforts to suppress political speech. *See id.* at 1-8.

Whatever government does, it may not exceed the powers the people have delegated to it. *See A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 528-29 (1935) (citing *Ex parte Milligan*, 71 U.S. (4 Wall.) 2, 120, 121 (1866); *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 426 (1934)). These powers are further constrained by other law, including the First Amendment, which mandates that "Congress shall make no law . . . abridging the freedom of speech." U.S. Const. amend. I. This "'guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office.'" *Buckley*, 424 U.S. at 15 (citation omitted).

---

[5] *Available at* http://jamesmadisoncenter.org/WI/BriefforAppellee032207.pdf.

B. The Unambiguously Campaign Related Principle

If "Congress shall make no law," how may government regulate election-related First Amendment activities? *Buckley* identified the answer as "[t]he constitutional power of Congress to *regulate federal elections*." *Id.* at 13 (footnote omitted) (emphasis added) (citing U.S. Const. art. I, § 4). *Buckley* noted that "Article I, § 4, of the Constitution grants Congress the power to regulate elections of members of the Senate and House of Representatives." *Id.* at 13 n.16 (also citing decisional authorities extending this power to elections for President and Vice President and to primary elections).

This authority to regulate elections is self-limiting. If the government tries to regulate First Amendment activity not closely and clearly related to election campaigns, it goes beyond its authority to regulate elections. The key to the *Buckley* analysis, as stated in its discussion of a disclosure requirement, is the clearly articulated constitutional question of whether "the *relation* of the information sought to the purpose of the Act [regulating elections] *may be too remote*," and, therefore, "*impermissibly broad*." *Id.* at 80 (emphasis added). The Court requires that government limit its election-related laws to reach only First Amendment activities "*unambiguously related* to the campaign of a particular federal candidate," *id.* at 80 (emphasis added), in short, "unambiguously campaign related," *id.* at 81.

Buckley applied this unambiguously-campaign-related requirement to: (1) expenditure limits, *id.* at 42-44; (2) political-committee status and disclosure, *id.* at 79; (3) non-political-committee disclosure of contributions and independent expenditures,[6] *id.* at 79-81; and (4)

[6]"Independent expenditure" is a term of art referring to an express-advocacy communication that is not coordinated with a candidate so as to become a contribution. *See* 2 U.S.C. § 431(17).

contributions, *id.* at 23 n.24, 78 ("So defined, 'contributions' have a sufficiently close relationship to the goals of the Act [regulating elections], for they are connected with a candidate or his campaign.").

To implement this unambiguously-campaign-related requirement for political-committee status, the Court established the major-purpose test for "political committees": "To fulfill the purposes of the Act [regulating elections] they need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." *Id.* at 79. "Expenditures of candidates and of 'political committees' so construed can be assumed to fall within the core area sought to be addressed by Congress. They are, by definition, *campaign related*." *Id.* at 79 (emphasis added). This test assures that expenditures are "unambiguously related to the campaign of a particular federal candidate." *Id.* at 80. To implement the unambiguously-campaign-related requirement as to expenditures, the Court established the express-advocacy test, which asks whether a communication has explicit words expressly advocating the election or defeat of a clearly identified candidate. *Buckley*, 424 U.S. at 44 & n.52, 80.

In *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986) ("*MCFL*"), the Court again recognized the unambiguously-campaign-related requirement in two areas. First, it applied the express-advocacy test to implement the unambiguously-campaign-related requirement as applied to the prohibition on corporate independent expenditures at 2 U.S.C. § 441b. *MCFL*, 479 U.S. at 249. Second, *MCFL* reiterated the major-purpose test, which implements the

unambiguously-campaign-related requirement as to PAC status. *Id.* at 253, 262 (major-purpose test determined by express-advocacy "independent spending").[7]

McConnell declared "the express advocacy restriction . . . an endpoint of statutory interpretation, not a first principle of constitutional law." 540 U.S. at 190. But the Court established the express-advocacy test to implement the unambiguously-campaign-related requirement, which *is* a first principle of constitutional law. *McConnell* expressly recognized this by quoting *Buckley*'s explanation that the express-advocacy construction was done "'[t]o insure that the reach' of the disclosure requirement was 'not impermissibly broad.'" *Id.* at 191 (quoting *Buckley*, 424 U.S. at 80). *McConnell* also implicitly endorsed the unambiguously-campaign-related requirement when it stated: "In narrowly reading the FECA provisions in *Buckley* to avoid problems of vagueness and overbreadth, we nowhere suggested that a statute that was neither vague nor overbroad would be required to toe the same express-advocacy line." *Id.* at 192. Implicitly then, where a restriction on First Amendment liberties *is* vague or *overbroad* (for reaching beyond things unambiguously campaign related) it must toe the express advocacy line,[8]

---

[7]The unambiguously-campaign-related requirement was also affirmed in *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765 (1978), which held that corporations have a First Amendment right to make either contributions or expenditures for or against ballot initiatives, because "[r]eferenda are held on issues, not candidates for public office. The risk of corruption perceived in cases involving candidate elections simply is not present in a popular vote on a public issue." *Id.* at 790 (citations omitted). And the requirement was affirmed again in *Citizens Against Rent Control v. Berkeley*, 454 U.S. 290 (1981) ("*CARC*"), which applied "exacting scrutiny," *id.* at 294 ("Placing limits on contributions which in turn limit expenditures plainly impairs freedom of expression."), to a limit on contributions to a California ballot initiative committee and held it unconstitutional because it d[id] not advance a legitimate governmental interest significant enough to justify its infringement of First Amendment rights." *Id.* at 298.

[8]Since *McConnell*, several courts have embraced the express advocacy construction as an indispensable tool in dealing with vague or overbroad provisions. For example, the Ninth Circuit in *American Civil Liberties Union of Nevada v. Heller*, 378 F.3d 979, 985 (9th Cir. 2004),

or its "functional equivalent." *Id.* at 206. *McConnell*'s facial upholding of the prohibition on electioneering communications only "to the extent that [they] . . . are the functional equivalent of express advocacy," *id.*, was another reaffirmation of the unambiguously-campaign-related requirement.[9]

In *WRTL II*, the Supreme Court applied the unambiguously-campaign-related requirement to eliminate overbreadth in the regulation of "electioneering communications" as defined in FECA. The Court did so by establishing the appeal-to-vote test, under which government may regulate electioneering communications as defined in FECA whose only reasonable interpretation is as an appeal to vote for or against a clearly identified candidate. *WRTL II*, 127 S. Ct. at 2659, 2667, 2669 n.7; *North Carolina Right to Life v. Leake,* 525 F.3d 274, 282 (4th Cir. 2008). *WRTL II* further held that the corporate-form corruption interest does not "extend[] beyond campaign speech." *WRTL II*, 127 S. Ct. at 2672. So *WRTL II*'s appeal-to-vote test is the application of the

---

followed the Sixth Circuit in endorsing the express advocacy test as the appropriate tool where a provision is vague and overbroad:

> Nevertheless, as stated recently by the Sixth Circuit, *McConnell* "left intact the ability of courts to make distinctions between express advocacy and issue advocacy, where such distinctions are necessary to cure vagueness and over-breadth in statutes which regulate more speech than that for which the legislature has established a significant governmental interest." *Anderson v. Spear*, 356 F.3d 651, 664-65 (6th Cir. 2004).

See also Center for Individual Freedom v. Carmouche, 449 F.3d 655 (5th Cir. 2006).

[9]*McConnell* also expressly recognized the existence of "issue advocacy," which it described as "'discussion of political policy generally or advocacy of the passage or defeat of legislation,'" 540 U.S. at 205 (quoting *Buckley,* 424 U.S. at 48), and of "genuine issue ads" that it recognized likely lay beyond Congress' ability to regulate. *Id.* at 206 n.88. Issue advocacy is not unambiguously campaign related, as *WRTL II* recognized. *See infra*.

unambiguously-campaign-related requirement to electioneering communications, just as the express advocacy test was the Court's application of the unambiguously-campaign-related requirement to independent expenditures.

WRTL II also reaffirmed that the purpose of the unambiguously-campaign-related requirement—and its appeal-to-vote test applying it—is twofold. Negatively, it confines government within the pale of its constitutional authority to regulate elections. *See supra* at 8. Positively, it protects what the Court called "'genuine issue ads,'" *id*. at 2659 (quoting *McConnell*, 540 U.S. at 206 & n.88), 2668 (same), 2673 (same), or "issue advocacy," *id.* at 2667.[10] *WRTL II* explained that "[i]ssue advocacy conveys information and educates," *id.* at 2667, and reaffirmed *Buckley*'s statement that, because issue advocacy and candidate advocacy often look alike, bright-line tests are required to protect issue advocacy from being chilled, and any doubt must be resolved in favor of free speech:

> [W]e have acknowledged at least since *Buckley* . . . that "the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application." 424 U.S., at 42. Under the test set forth above, that is not enough to establish that the ads can only reasonably be viewed as advocating or opposing a candidate in a federal election. "Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period." *Thornhill v. Alabama,* 310 U.S. 88, 102 (1940). Discussion of issues cannot be suppressed simply because the issues may also be pertinent in an election. Where the First Amendment is implicated, the tie goes to the speaker, not the censor.

127 S.Ct. at 2669.

---

[10] *See also WRTL II*, 127 S. Ct. at 2672-73 (listing prior concurrences by Justices Brennan and Stevens distinguishing issue advocacy from campaign advocacy).

Lest there be any doubt about the necessity of speech-protective lines, *WRTL II* reiterated that "the benefit of any doubt [goes] to protecting rather than stifling speech," *id.* at 2667 (citing *New York Times v. Sullivan*, 376 U.S. 254, 269-70 (1964)), "in a debatable case, the tie is resolved in favor of protecting speech," *id.* at 2669 n.7, and "the benefit of the doubt [goes to] speech, not censorship." *Id.* at 2674. In other words, free speech about public issues, especially political ones, is so central and essential to our system of government that it is better to allow some theoretically-regulable speech to go unrestricted than to chill public debate. This approach is akin to our criminal jurisprudence, which says that it is better to let a guilty person go free than to convict an innocent person, except that chilling free speech affects not only lone speakers, but also their hearers and our very system of government. *WRTL II* reaffirmed what the Court held in *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002): "The Government may not suppress lawful speech as the means to suppress unlawful speech. Protected speech does not become unprotected merely because it resembles the latter. The Constitution requires the reverse." *WRTL II,* 127 S. Ct. at 2670 (quoting *Ashcroft*, 535 U.S. at 255). To do otherwise would "'turn[] the First Amendment upside down.'" *Id.* (citation omitted).

In *Leake*, a federal appellate court applied the unambiguously-campaign-related requirement in a cogent, extended analysis that provides guidance for the present application of it. *Leake* stated:

> The *Buckley* Court [] recognized the need to cabin legislative authority over elections in a manner that sufficiently safeguards vital First Amendment freedoms. It did so by demarcating a boundary between regulable election-related activity and constitutionally protected political speech: after *Buckley*, campaign finance laws may constitutionally regulate only those actions that are "unambiguously related to the campaign of a particular ... candidate."

525 F.3d at 281 (citations omitted). *Leake* dealt with both the express-advocacy test and the major-purpose test, as governing applications of the unambiguously-campaign-related requirement. Similarly, district courts have applied *Buckley*'s unambiguously-campaign-related requirement. *Nat'l Right to Work Legal Def. and Educ. Found., Inc. v. Herbert*, 581 F. Supp. 2d 1132, 1146 (D. Utah 2008) ("[T]he government possesses a substantial interest in the regulation of political speech only when that political speech is unambiguously campaign related." (citing *Buckley,* 424 U.S. at 79-81)); *Center for Individual Freedom v. Ireland*, Nos. 08-190 & 08-1133, 2008 WL 4642268, at *5, *9, *14, *17, *25 (S.D. W. Va. Oct. 17, 2008) (same); *Broward Coal. of Condos., Homeowners Ass'ns and Cmty. Orgs. v. Browning*, No. 08-445, 2008 WL 4791004, at *7 (N.D. Fla. Oct. 29, 2008) (same), *clarified on other grounds,* 2008 WL 4878917 (N.D. Fla. Nov. 2, 2008).

In sum, the unambiguously-campaign-related requirement is the unifying constitutional principle of the governing precedents here—*Buckley*, *MCFL*, *McConnell*, and *WRTL II*. The Supreme Court has applied it as a threshold requirement—regardless of the level of scrutiny[11]—to assure that restrictions based on government-asserted interests in regulating elections under Article I, § 4 of the Constitution are closely and clearly related to that authority. *See*, *e.g.*, *Buckley*, 424 U.S. at 80-81. The Court has also been applied it to determine whether government has a sufficient interest. *See WRTL II*, 127 S. Ct. at 2667 ("This Court has never recognized a compelling interest in regulating ads, like WRTL's, that are neither express advocacy nor its functional equivalent."), 2672 (corporate-form corruption interest does not "extend[] beyond campaign

[11]As noted above, *Buckley* applied the unambiguously-campaign-related requirement to the definitions of contributions, expenditures, and political committees in both restriction and reporting contexts, the regulation of which are subject to differing standards of scrutiny.

speech"); *see also McConnell*, 540 U.S. at 167, 170 (First Amendment activity must "benefit directly federal candidates" for corruption interest to exist under intermediate scrutiny). And any tailoring analysis as to the relation of a restriction to the governmental interest in regulating corruption relating to *elections* must logically establish that the restriction has a close and clear nexus to *elections*. *Cf. Buckley*, 424 U.S. at 80 ("too remote" statement may be viewed as either a threshold test or as a narrow tailoring analysis).[12] In short, whether analyzed as a threshold requirement or in the application of the relevant level of constitutional scrutiny, campaign finance laws may only regulate activities that are unambiguously campaign related.[13]

---

[12]Although this is not dispositive, even the name of the statute in question – the *Federal Election* Campaign Act – establishes its boundaries.

[13]Before *WRTL II*, the FEC recognized the unambiguously-campaign-related requirement in advisory opinions ("AOs"), albeit in an overly-narrow manner that was balanced to disfavor free speech, contrary to *WRTL II*'s mandate. In AO 2004-31 (*Darrow*), the FEC decided that the electioneering communication prohibition did not apply to ads by an auto dealership bearing the name of a candidate (who was the founder, chief executive officer, and chairman of the board of the auto dealership). In AO 2005-10 (*Berman & Doolittle*), the FEC said federal candidates from California may solicit funds to support California ballot-initiative committees despite the Federal Funds Restriction's application federal candidates and officeholders. Although these were actually *candidates*, and despite the fact that the Federal Funds Restriction provides no "individual capacity" option (in which capacity they sought to solicit), the FEC decided "that the restrictions on [f]ederal candidates and officeholders in 2 U.S.C. 441i(e)(1)(A) and (B) do not apply to the fundraising activities of Representatives Berman and Doolittle." AO 2005-10 at 2. If the FEC concedes the unambiguously-campaign-related requirement as applied to *federal candidates and officeholders* (whose involvement was a central concern of *McConnell*, *see infra* at Part I.D), then it must concede the interest as to political parties, which are favored in our political system and pose little or no real corruption concerns.

Furthermore, while neither FEC matters under review ("MURs"), AOs, nor statements of reasons ("SORs") establish rules of law, *e.g.,* Comments of the James Madison Ctr. for Free Speech on FEC Notice 2008-13 at 7 (Dec. 19, 2008) (citing 2 U.S.C. § 437f(b)), *available at* http://www.fec.gov/law/policy/enforcement/2009/comments/comm18.pdf, it is worth noting that six FEC commissioners, four of whom remain on the FEC, *see* Commissioners, *available at* http://www.fec.gov/members/members.shtml, have recognized the unambiguously-campaign-related standard. *In re November Fund,* MUR 5541, SOR of Vice Chairman Petersen &

C. Level of Scrutiny

In regard to the relevant level of scrutiny, *McConnell* employed intermediate scrutiny in upholding the Federal Funds Restriction facially because it decided that the Restriction prohibited contributions, not the ability of political parties to speak, for which they could use federal funds. 540 U.S. at 138-39.[14] However, *WRTL II* applied strict scrutiny and held that WRTL's option to use federal funds did not eliminate its right to use non-federal funds where its First Amendment activity was not unambiguously campaign related. 127 S. Ct. at 2671 n.9. This is analogous to the present case, where the Restriction prohibits Plaintiffs from soliciting and using non-federal funds for their intended activities, which are not unambiguously campaign related.

Comm'rs Hunter & McGahn at 5 (Jan. 22, 2009), available at http://eqs.nictusa.com/eqsdocs /29044223819.pdf; *In re Council for Responsible Gov't, Inc., et al.,* MURs 5024, 5146 & 5154, SOR of Chair Weintraub & Comm'rs McDonald & Thomas at 1-2 (Dec. 16, 2003), *available at* http://eqs.nictusa.com/eqsdocs/000006C6.pdf, http://eqs.sdrdc.com/eqsdocs/000006D2.pdf, and http://eqs.sdrdc.com/eqsdocs/000006CD.pdf. While this is a welcome change from what has happened in other MURs, *see, e.g.,* Comments of the James Madison Ctr. for Free Speech on FEC Notice 2008-13 at 6 n.7 & accompanying text (citing *In re Sierra Club,* MUR 5634, Certification (Sept. 20, 2005), *available at* http://eqs.sdrdc.com/eqsdocs/00005806.pdf), this change does not adversely affect Plaintiffs' claims, because the law they challenge chills the political speech, thereby establishing standing.

[14] *McConnell* noted the long-standing disagreement of dissenting members of the Court as to whether it is constitutionally proper to apply a lower standard of review to contributions than to expenditures. 540 U.S. at 137. It is unnecessary to reconsider this issue to decide this case in Plaintiffs' favor. Nevertheless, the Court should apply strict scrutiny given the serious burden that the Federal Funds Restriction imposes on First Amendment rights of expression and association. *See WRTL II*, 127 S. Ct. at 2664 (applying strict scrutiny because the ban "burdens political speech"). Plaintiffs further assert that as applied to state political parties, which may raise and use state funds, the ban on using them for federal election activities is a restriction on their expression, so strict scrutiny applies. *See infra*. Plaintiffs finally assert that, if the outcome of this case in their favor hinges on the standard of review, then any holding requiring the lower standard must be overturned.

Furthermore, unlike *McConnell*, the RNC intends to solicit donations to specific accounts, which it will be used exclusively for specified purposes. So unlike general donations to the RNC general treasury fund, donations in this case are directly linked to expression. The ballot-initiative context is worthy of note. In *CARC*, the Supreme Court employed "exacting scrutiny," 454 U.S. at 294, to strike down a limit on contributions to ballot-measure committees, noting that "[a]part from the impermissible restraint on freedom of association, but virtually inseparable from it in this context, [the limit] imposes a significant restraint on the freedom of expression of groups and those individuals who wish to express their views through committees." *Id.* at 298. *CARC* noted that, as with the present case, individuals could "make expenditures without limit" on a ballot measure "but may not contribute beyond the $250 limit when joining with others to advocate common views." *Id.* The Court concluded that "[p]lacing limits on contributions which in turn limit expenditures plainly impairs freedom of expression." *Id.* Such is the case at bar—association and expression are inextricably intertwined, as are contributions and expenditures. Strict scrutiny is required.

But even if intermediate scrutiny is applied, the Federal Funds Restriction applied to activities that are not unambiguously campaign related is not tailored to any sufficient government interest. Just as *WRTL II* said that the "Court has never recognized a compelling interest in regulating ads, like WRTL's, that are neither express advocacy nor its functional equivalent," 127 S. Ct. at 2667, *i.e.,* "campaign speech," *id.* at 2672, so can there be no "sufficiently important interest" in regulating speech that is not unambiguously campaign related. Nor could a restriction so untethered to its sole authority possibly be "closely drawn."

II. The *McConnell* Facial Challenge Did Not Decide These As-Applied Issues.

A. As Applied Challenges Are Available Remedies.

At the outset, it must be noted that *McConnell*'s facial upholding of the Federal Funds Restriction did not preclude future as-applied challenges. In *Wisconsin Right to Life, Inc. v. FEC,* 546 U.S. 410(2006) ("*WRTL I*"), the Supreme Court unanimously held that, by facially upholding BCRA's electioneering-communication prohibition, the Court "did not purport to resolve future as-applied challenges." *Id.* at 412. The Court did so despite (a) the FEC's argument that the logic of the electioneering-communications prohibition precluded exceptions and (b) *McConnell*'s broadly-worded facial-analysis language saying that the Court had "uph[eld] stringent restrictions on *all* election-time advertising that refers to a candidate because such advertising will *often* convey [a] message of support or opposition." 540 U.S. at 239 (emphasis in original). *WRTL I* showed that such broad language about "*all*" electioneering communications being subject to prohibition because *some* were unambiguously campaign related – did not mean that the Court would not protect issue advocacy in an as-applied challenge. *See* 546 U.S. at 411-12.

WRTL II reiterated the Court's rejection of the notion that "*McConnell* left 'no room' for as applied challenges . . . ," 127 S. Ct. at 2659 (citation omitted), and protected issue advocacy by applying the appeal-to-vote test to implement the unambiguously-campaign-related requirement as applied to the electioneering communication prohibition, *id.* at 2667. Similarly, the broadly worded facial-analysis language in *McConnell*'s discussion of the Federal Funds Restriction neither precludes nor decides the present as-applied claims. *McConnell* itself warned against an overbroad reading of the language of a particular case: "We have long rigidly adhered to the tenet never to formulate a rule of constitutional law broader than is required by the precise facts to

which it is to be applied for the nature of judicial review constrains us to consider the case that is actually before us," 540 U.S. at 192 (citation and internal quotation marks omitted).

Furthermore, *McConnell* expressly contemplated future as-applied challenges to provisions it facially upheld. *See, e.g.,* 540 U.S. at 157 n. 52, 159, 173, 242, 243-44. So this Court should reject any arguments that *McConnell*'s facial holding precludes Plaintiffs' current as-applied challenges. *See also Gonzales v. Carhart*, 127 S. Ct. 1610, 1638-39 (2007) (upholding law facially but noting availability of future as applied challenges: "It is neither our obligation nor within our traditional institutional role to resolve questions of constitutionality with respect to each potential situation that might develop"); *Broadrick v. Oklahoma*, 413 U.S. 601, 615-16 (1973) (where overbreadth challenge fails, "whatever overbreadth may exist should be cured through case-by-case analysis of the fact situations to which" a statute, "assertedly, may not be applied").

Any analysis of what *McConnell* did and did not do in its facial decision must also be considered in the light of *WRTL II*'s subsequent reaffirmation of powerful protection for First Amendment rights, rejection of broad prophylactic restrictions, and rejection of deference to Congress on campaign-finance restrictions. As Professor BeVier put it, "*WRTL II* guts *McConnell*, but it does so not alone or even most significantly by virtue of its holding. More importantly, it guts *McConnell* because it resurrects the First Amendment." Lillian R. BeVier, *First Amendment Redux:* Buckley v. Valeo *to* FEC v. Wisconsin Right to Life, 2006-2007 Cato Sup. Ct. Rev. 77, 96 (2007). *See also id.* at 94-102 ("*The First Amendment Resurrected*"). And "seven Justices . . . agree that [*WRTL II*] effectively overrules *McConnell* without saying so." *WRTL II*, 127 S. Ct.

at 2683 n.7 (Scalia, J., joined by Kennedy & Thomas, JJ., concurring in part and concurring in the judgment).

B. Corruption Interest Relevant in *McConnell* Not Present Here

The corruption interest that justified upholding the Federal Funds Restriction facially is not present in this as-applied challenge. *McConnell* sustained the Federal Funds Restriction against a facial overbreadth challenge by pointing to the threat of corruption or its appearance arising from: **(1)** political parties use of non-federal funds and state funds to influence federal elections and **(2)** the fundraising practices national parties historically employed to raise such funds. 540 U.S. at 145-52. Based on the facts in the record before it, the Court concluded that the means by which national parties used the relationship between themselves and federal officeholders rendered "all large soft-money contributions to national parties *suspect*." *Id.* at 155 (emphasis added).[15] Nevertheless, while this finding was sufficient to uphold the law facially, it is not sufficient to uphold the law in every application, particularly in light of the First Amendment activities and fundraising practices at issue in this case.

Unlike in *McConnell*, Plaintiffs' intended activities are too far removed from any federal candidate or officeholder to pose any threat of corruption or its appearance. *McConnell* identified certain fundraising relationships and practices, referenced below, that rendered *all* national party non-federal funds *suspect* because they brought "soft-money donors and federal candidates and officeholders together." *Id.* at 149. The Court concurred with Congress's conclusion that these practices caused national parties to become "inextricably intertwined with federal officeholders and candidates, who raised the money for [them]." *Id.* at 155 (quoting statement of Rep. Shays)

[15] *McConnell* used the term "soft money" to describe "non-federal funds."

(quotation marks omitted). As discussed below, however, none of these practices are involved in Plaintiffs' proposed activities. The absence of any cognizable corruption interest is clear for four reasons: (1) the absence of involvement by federal candidates and officeholders in the proposed activities; (2) the absence of any preferential access to federal officeholders or candidates provided to donors; (3) the lack of any direct benefit to a federal candidate from the intended activities; and (4) the already prophylactic nature of the "gratitude" possibility that *McConnell* identified as falling within the interest of preventing corruption or its appearance. *Id*. at 145. In short, Plaintiffs' activities are not unambiguously campaign related. Therefore, there is no appearance of corruption with respect to these activities and the Federal Funds Restriction is unconstitutional as applied to them.

First, in the pre-BCRA fact pattern that *McConnell* considered, non-federal funds and state funds were "in many cases solicited by the candidates themselves. . . . ." *Id.* at 125. Later, in its legal analysis, *McConnell* again relied on the fact that "federal officeholders have commonly asked donors to make soft-money donations to national and state committees 'solely in order to assist federal campaigns,' including the officeholder's own." *Id.* at 146 (citation omitted). "Parties kept tallies," *McConnell* continued, "of the amounts of soft money raised by each officeholder, and the amount of money a Member of Congress raise[d] for the national political committees often affect[ed] the amount the committee g[a]ve to assist the Member's campaign.'" *Id.* (citation omitted). And national political parties and candidates "often teamed" in "joint fundraising" efforts, so that candidates could "'raise[e] soft money for use in their own races." *Id.* at 146-47 (citation omitted).

None of that is possible in the present as-applied situation, because no federal officeholders or candidates will solicit, receive, direct, transfer, or spend non-federal/state funds. SUF ¶ 24. *See also* 2 U.S.C . 441i(e). Therefore, any potential appearance of the corruption of federal candidates or officeholders is proportionally reduced.

Second, *McConnell* stated that "the manner in which parties have *sold* access to federal candidates and officeholders [] has given rise to the appearance of undue influence." 540 U.S. at 153-54. The Court noted that the record was "replete with [] examples of national party committees peddling access to federal candidates and officeholders in exchange for large soft-money donations." *Id.* at 150. "[T]he six national party committees actually furnish[ed] their own menus of opportunities for access to would-be soft-money donors, with increased prices reflecting an increased level of access." *Id*. at 151. National parties regularly offered meetings with officeholders in return for large donations of non-federal funds, and parties encouraged officeholders to meet with large donors. *Id.* at 151-52.

In this as-applied setting, however, no appearance of corruption can arise from "the selling of access." *Id.* at 154. On the contrary, the RNC will not grant contributors to the Accounts at issue with any preferential access to federal officeholders or candidates. The RNC will not facilitate meetings between officeholders and contributors, encourage officeholders to meet with contributors, or provide any other opportunities for access, different than or beyond that provided to contributors of federal funds. So any governmental interest in preventing the appearance of corruption that arises from the exchange of "large" contributions for "access" is simply not present in this as-applied setting.

Third, *McConnell* recognized that any First Amendment *activity* under analysis for a potential corruption appearance must *directly* benefit federal candidates. *Id.* at 167 ("benefit federal candidates directly"), 170 ("benefit directly federal candidates"). This is a recognition of the unambiguously-campaign-related requirement, (which prevents a campaign restriction from being "impermissibly broad," *Buckley*, 424 U.S. at 80), which as noted above is applicable (a) as a threshold test, (b) in determining whether the corruption interest on which *McConnell* relied, 540 U.S. at 154, is present, and (c) in determining whether a restriction is properly tailored.

In the activities at issue in this case there is no "direct" benefit or detriment to any federal candidate, *i.e.,* the activities are not "unambiguously related to the campaign of a particular federal candidate." *Buckley*, 424 U.S. at 80. On the contrary, the RNC intends to solicit non-federal funds and state funds into separate accounts exclusively for non-federal purposes. There is no possibility that these funds will be used to support any federal candidates or campaigns. Similarly, the CRP wants to spend state funds to support state ballot initiatives and candidates for state office; it will not target these activities to any federal candidate. So unlike *McConnell*'s facial analysis, here neither the fundraising practices nor the First Amendment activities at issue pose any threat of corruption or its appearance.

Finally, *Buckley* originally identified *quid pro quo* prevention as the corruption that the government has an interest in preventing. 424 U.S. at 26-27; *see also FEC v. National Conservative PAC*, 470 U.S. 480, 497(1985) ("*NCPAC*") ("We held in *Buckley* and reaffirmed in *Citizens Against Rent Control* that preventing corruption or the appearance of corruption are the only legitimate and compelling government interests thus far identified for restricting campaign finances."). So *McConnell*'s extension of this concern about the actual or apparent exchange of

quids for quos to the mere possibility of "gratitude" and those who might attempt to exploit it is a prophylactic measure. *See* 540 U.S. at 145.

But a "gratitude" theory of corruption becomes far too attenuated when stretched to encompass activities that do not influence federal elections. Indeed, to the extent *McConnell* discussed candidates' "gratitude" that "donors would seek to exploit," *id*., it did so only in the context of large donations "for the specific purpose of influencing a particular candidate's federal election." *Id*.. Donors cannot be seen as "creat[ing] debt on the part of officeholders" when their donations cannot be used to assist any federal candidate's campaign. *Id.* at 146. So Plaintiffs' intended activities pose no threat of creating "obligated" or "grateful" officeholders that is sufficient to justify regulation.

The Supreme Court has stated that "[b]road prophylactic rules in the area of free expression are suspect." *NAACP v. Button*, 371 U.S. 415, 438 (1963). At some point, the notion of gratitude as a governmental corruption interest becomes, in *Buckley*'s words, "too remote," 424 U.S. at 80, and simply becomes one prophylaxis upon another. *WRTL II* repudiated "such a prophylaxis-upon-prophylaxis approach" regarding a circumvention argument in the strict scrutiny context. 127 S. Ct. at 2672. That logic applies both to *McConnell*'s suggestion of a circumvention interest as to the Federal Funds Restriction, 540 U.S. at 165, and to the present as-applied situations, whether or not strict scrutiny applies. As *WRTL II* reiterated in the same discussion, "'Government may not suppress lawful speech as the means to suppress unlawful speech.'" *WRTL* II, 127 S. Ct. at 2672 (citation omitted). Any "gratitude" that some federal candidate might feel for

the activities proposed herein, which do not directly benefit such candidates, is entirely too remote to be constitutionally cognizable in the First Amendment context.[16]

In a key passage describing the Federal Funds Restriction, *McConnell* said that "in the main, [it] does little more than regulate the ability of wealthy individuals, corporations, and unions to contribute large sums of money *to influence federal elections, federal candidates, and federal officeholders*." 540 U.S. at 138 (emphasis added). The present as-applied challenges deal

---

[16]As to the notion that campaign-finance "reform" measures eliminate the appearance of corruption and improve citizen confidence in government, a September 2007 Gallup poll reveals that Americans "'express less trust in the federal government than at any point in the last decade, and trust in many federal government institutions is now lower than it was during the Watergate era, generally recognized as the low point in American history for trust in government.'" *GALLUP: Trust in Federal Government, On Nearly All Issues, Hits New Low—Even less than Watergate Era*, Editor & Publisher, Sept. 27, 2007, available at http://www.editorandpublisher.com/eandp/news/article_display.jsp?vnu_content_id=100364.7275. Professor BeVier provides the following citations concerning "reform" failure, in response to Justice Souter's dissent in *WRTL II*, 127 S. Ct. at 2652:

> A few scholarly efforts have been made to challenge some of the empirical assumptions that support Justice Souter's opinion, but he does not join issue with their claims. See, e.g., David M. Primo and Jeffrey Milyo, Campaign Finance Laws and Political Efficacy: Evidence from the States, 5 Election L.J. 23, 36 (2006) (reporting results of a study of the link between campaign finance laws and citizen perceptions of democratic rule, which found that "the effect of campaign finance laws is sometimes perverse, rarely positive, and never more than modest"); Nathaniel Persily and Kelli Lammie, The Law of Democracy: Campaign Finance after McCain-Feingold: Perceptions of Corruption and Campaign Finance: When Public Opinion Determines Constitutional Law, 153 U. Pa. L. Rev. 119, 174 (2004) (reporting results of a study concluding that citizens of countries with radically different systems of campaign finance regulation share Americans' lack of "'confidence in the system of representative government,'" which suggest that campaign finance reformers might be surprised and "disappointed by the intractability and psychological roots of that lack of confidence.").

BeVier, *supra*, at 112 n.162.

with what the Federal Funds Restriction does *other than* "*in the main*." That is, they deal with activities *not* unambiguously related to influencing federal elections, federal candidates, or federal officeholders. They deal with *issue* advocacy, *state* elections, and the like, all of which the Constitution protects. In these as-applied challenges, the relationship between any governmental interest in preventing corruption and the Federal Funds Restriction is "too remote," *Buckley*, 424 U.S. at 80, so the Restriction is "impermissibly broad," *id.*

III. Political Parties Serve A Unique and Important Role in Political Participation.

Political parties have long had a favored status in campaign law because they serve the vital role of allowing citizens to advance "common political goals and ideas." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 357 (1997). A "political party's independent expression . . . reflects its members' views about the philosophical and governmental matters that bind them together." *Id.* at 615 (Breyer, J., joined by O'Connor & Souter, JJ.). As such, they have a "unique role in serving" First Amendment principles, *Colo. Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 629 (1996) ("*Colorado I*") (Kennedy, J., concurring, joined by Rehnquist, C.J., & Scalia, J.), and political party expression is protected "'core' political speech," *id.* at 616 (citation omitted). The First Amendment protects parties' primaries, *California Democratic Party v. Jones*, 530 U.S. 676 (2000), internal processes, *Eu v. San Francisco County Democratic Cent. Comm.*, 489 U.S. 214, 230 (1989) (including how a party chooses to "organize itself, conduct its affairs, and select its leaders"), and rights of association generally, *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 224 (1986) ("The Party's determination of the . . . structure which best allows it to pursue its political goals, is protected by the Constitution").

Political parties form around ideas and principles that parties advance. For example, the GOP's 55 page 2008 platform includes positions on such public-policy issues as national security, health care, energy, and the environment. *Available at* http://www.gop.com/2008Platform/. As Judge Henderson found in *McConnell*: "The RNC seeks to advance its core principles by advocating Republican positions, electing Republican candidates and encouraging governance in accord with Republican views at the federal, state and local levels." 251 F. Supp. 2d at 335 (Judge Henderson's findings). To be sure, electing federal candidates is an important way in which the RNC promotes its platform, yet it is only one of the ways. While candidates come and go, parties endure as a bulwark for the political philosophy upon which they were formed. Stated differently, political parties are organizations that promote principles through a variety of means, only *one* of which is electing candidates to *federal* office.

The Federal Funds Restriction, however, prohibits national parties from soliciting and spending non-federal funds and state funds for *any* activity, including activities that promote a party's platform in ways other than electing federal candidates. For example, the New Jersey Account, Virginia Account, Redistricting Account, Grassroots Lobbying Account, Litigation Account, Building Account and the State Elections Accounts all further the RNC's platform in ways *other than* by electing federal candidates. As such, these accounts are not "unambiguously related to the campaign of a particular federal candidate." *Buckley*, 424 U.S. at 80. Similarly, the CRP's planned communications regarding ballot measures and various state election activities all support CRP's platform in ways *other than* by electing federal candidates. As such, these activities are not "unambiguously related to the campaign of a particular federal candidate." *Id.* at 80.

Despite the unique and important role of political parties, the Federal Funds Restriction prohibits them from engaging in these non-federal-campaign activities while other organizations, such as corporations and unions, may do the very same activities freely. *See, e.g., Bellotti,* 435 U.S. at 780 n.15, 784 (referring to corporations (citing *Santa Clara County v. Southern Pac. R. Co.,* 118 U.S. 394 (1886))). In the wake of *WRTL II*, corporations and unions may use non-federal funds to run ads that clearly identify federal candidates and even PASO them, so long as the ads (a) contain no express advocacy as defined in *Buckley*, *see WRTL II*, 127 S. Ct. at 2659, 2667, 2669 n.7; and (b) are not electioneering communications as defined in FECA whose only reasonable interpretation is as an appeal to vote for or against a clearly identified candidate, *WRTL II*, 127 S. Ct. at 2659, 2667, 2669 n.7; *see also Leake*, 525 F.3d at 281-82. So corporations and unions may solicit and spend non-federal funds for grassroots lobbying, while the RNC may not. Corporations and unions may also use non-federal funds for independent expenditures and contributions supporting state candidates where not prohibited by state law, while the RNC may not.[17]

State political parties are similarly disadvantaged as compared to corporations and unions when engaging in activities that fall within the definition of "federal election activity," such as communications that clearly identify and PASO a federal candidate but are not unambiguously related to the federal candidate's campaign. Even if the PASO language does not fall within *WRTL II*'s appeal-to-vote test, FECA still prohibits state parties from using their state funds for

[17]Allowing state political parties to solicit and spend state funds for certain purposes does not mitigate the deprivation of national parties' abilities to do the same. The availability of a less effective means of communication—in this case by a legally separate entity—is irrelevant to determining the "permissibility of a limit[] on speech." *WRTL II*, 127 S. Ct. at 2671 n. 9.

the speech. For example, while a corporation or union may use non-federal funds to PASO federal officials for their active opposition to ballot initiatives on redistricting, the Federal Funds Restriction makes it a crime for a state political party to do so. And the PASO prohibition for state political parties applies year round, not just to the short periods before elections when corporations must make sure that their issue-advocacy electioneering communications do not fall within *WRTL II*'s appeal-to-vote test. *See* 2 U.S.C. § 434(f)(3)(A)(i)(II).

IV. The Federal Funds Restriction Is Unconstitutional As Applied.

In an as-applied challenge to laws regulating political speech, the government must prove that the challenged law is constitutional. *WRTL II*, 127 S. Ct. at 2664 (rejecting the FEC's contention that the speaker has the burden of proof in an as-applied challenge (citing *Bellotti*, 435 U.S. at 786)).

Plaintiffs' planned activities are not "unambiguously related to the campaign of a particular federal candidate." *Buckley*, 424 U.S. at 80. And so there is no sufficient interest relating to Congress's authority to regulate federal elections, *id.* at 13 & n.16, to apply the Federal Funds Restriction to these activities and the Restriction is in no way tailored to that authority.

Count 1: RNC & Duncan—New Jersey Account

The RNC and Chairman Duncan's intended activities for the New Jersey Account will not "influence *federal elections*, *federal candidates*, [or] *federal officeholders.*" *McConnell*, 540 U.S. at 138 (emphasis added). Therefore, these activities are not "unambiguously related to the campaign of a particular federal candidate," *Buckley*, 424 U.S. at 80, and pose no threat of corruption or its appearance.

First, the RNC will not use the New Jersey Account to influence federal elections. *McConnell*'s analysis of the ban on state party "federal election activity" ("FEA"), 2 U.S.C. § 441i(b), is relevant here. *McConnell* upheld the Federal Funds Restriction for state and local parties because FECA limited the FEA definition to: (1) specified activities in elections where *federal candidates* appear on the ballot, and (2) public communications mentioning *federal candidates*. 540 U.S. at 168-70. *McConnell* held that, so limited, the Federal Funds Restriction was "narrowly focused" to "those contributions to state and local parties that can be used to benefit federal candidates directly[,]" which "pose the greatest risk" of corruption." *Id.* at 167. As noted above, this recognized the constitutional principle that campaign finance laws may regulate only First Amendment activities that are unambiguously-campaign-related .

The New Jersey Account will not pay for (1) activities in elections with federal candidates on the ballot or (2) communications mentioning federal candidates. SUF ¶¶ 8-9. Rather, the New Jersey Account will support only *state* candidates and parties in *state* elections. Therefore, applying *McConnell*, these *activities* neither "directly benefit" federal candidates nor pose any risk of corruption or its appearance. 540 U.S. at 167. These state election *activities* are not unambiguously campaign related.

Second, *McConnell*'s appearance-of-corruption theory, which arose from the "close relationship between federal officeholders and [] national parties," *id.* at 154, and the "means by which parties [] traded on that relationship," *id.*, is absent here. As noted above, unlike the historical fundraising practices at issue in *McConnell*, here (1) no federal candidate or office-holder will solicit funds for the New Jersey Account, (2) no donor to the New Jersey Account will

have preferential access to any federal officeholder, and (3) the RNC will use the New Jersey Account only for state activities.

Nor can one stretch *McConnell*'s prophylactic "gratitude" concept of corruption to activity so far removed from any federal election or candidate. To be sure, many Republican officeholders might be grateful to everyone involved if Republicans are elected to state office in New Jersey, but this gratitude does not create "obligated" officeholders giving rise to an appearance of corruption. Federal candidates' and officeholders' gratitude toward New Jersey Account donors would be no different than their gratitude toward donors to the state candidate's campaign. And surely the federal government may not regulate contributions to state candidates on the basis that some federal candidate might be grateful.

In sum, the RNC's intended activities are not unambiguously campaign related. Funds from the New Jersey Account will not be used to influence federal elections and the fundraising practices employed to raise such funds pose no appearance of corruption. Therefore, the relationship between any governmental interest in preventing corruption and the Federal Funds Restriction is "too remote," *Buckley*, 424 U.S. at 80, and the restriction "impermissibly broad," *id.*, as applied to the New Jersey Account. To use the Supreme Court's words in *CARC*— the Restriction "does not advance a legitimate governmental interest significant enough to justify its infringement of First Amendment rights." 454 U.S. at 298. The Federal Funds Restriction is unconstitutional as applied to these activities.

Count 2: RNC & Duncan—Virginia Account

The facts for the Virginia Account are parallel to the facts for the New Jersey Account, and the Federal Funds Restriction is unconstitutional as applied to the Virginia Account for the same reasons it is unconstitutional as applied to the New Jersey Account.

Count 3: RNC & Duncan—Redistricting Account

As applied to the Redistricting Account, the Federal Funds Restriction fails the unambiguously-campaign-related requirement. Neither the activities nor the fundraising present any threat of corruption of federal candidates or officeholders, or its appearance. There is no sufficient governmental interest to regulate activities so far removed from federal elections and candidates.

Redistricting is the province of state legislators. While this state activity involves congressional districts, any effect on federal candidates or officeholders is far too attenuated to be deemed *unambiguously*-campaign-related. Indeed, if redistricting were subject to federal regulation, then federal law could ban even state and local parties from using state funds for such activities. But *McConnell* stated that only those *activities* that "*directly* benefit" federal candidates pose a risk of corruption sufficient to justify regulation. 540 U.S. at 168-70 (emphasis added). Thus, state parties, as well as corporations and unions, remain free to use non-federal funds to support state redistricting.

Furthermore, just as in previous counts, the *McConnell* appearance-of-corruption theory, which arose from the "close relationship between federal officeholders and [] national parties," *id.* at 154, and the "means by which parties [] traded on that relationship," *id.*, is absent here. Unlike the historical fundraising practices at issue *McConnell,* here (1) no federal candidate or office-holder will solicit funds into the Redistricting Account, (2) no contributor will receive preferential

access to any federal officeholder, and (3) the RNC will use contributions to the account only for state activities. Therefore, there is no justification for treating the Redistricting Account any differently than other organizations that may freely spend non-federal funds to support state redistricting efforts.

The RNC's and Chairman Duncan's activities regarding the Redistricting Account are not unambiguously-campaign-related, which makes the relationship between any governmental interest in preventing corruption and the Federal Funds Restriction "too remote," *Buckley*, 424 U.S. at 80, and the Restriction "impermissibly broad," *id.* As applied to the Redistricting Account, the Federal Funds Restriction "does not advance a legitimate governmental interest significant enough to justify its infringement of First Amendment rights." *CARC*, 454 U.S. at 298. The Federal Funds Restriction is unconstitutional as applied to these activities.

Count 4: RNC & Duncan – Grassroots Lobbying Account

As applied to the Grassroots Lobbying Account, the Federal Funds Restriction fails the unambiguously-campaign-related requirement. Neither grassroots lobbying, nor the solicitation of funds into the Grassroots Lobbying Account, present any threat of corruption or its appearance. The Federal Funds Restriction is unconstitutional as applied to activities so far removed from federal elections and candidates.

The right to petition is "one of 'the most precious of the liberties safeguarded by the Bill of Rights.'" *BE & K Constr. Co. v. NLRB*, 536 U.S. 516, 524 (2002) (quoting *United Mine Workers v. Illinois Bar Ass'n*, 389 U.S. 217, 222 (1967)). And grassroots lobbying is a quintessential exercise of the right to petition. *Eastern R.R. President Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 137-138 (1961); *Liberty Lobby, Inc. v. Pearson*, 390 F.2d 489, 491 (D.C. Cir.

1968). *Noerr* recognized the right to petition both the legislative and executive branches. 365 U.S. at 135. The Court held that attempts to influence the passage or enforcement of laws were constitutionally protected, essential to representative government, and could not violate the Sherman Act:

> In a representative democracy such as this, these [legislative and executive] branches of government act on behalf of the people and, to a very large extent, the whole concept of representation depends upon the ability of the people to make their wishes known to their representatives. . . . The right of petition is one of the freedoms protected by the Bill of Rights, and we cannot, of course, lightly impute to Congress an intent to invade these freedoms.

Id. at 137-38. *See also Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972) ("[T]he right to petition extends to all departments of the government.").

Bellotti protected the right of corporations "to publicize their views on a ballot question," 435 U.S. at 769, noting that "the First Amendment protects the right of corporations to petition legislative and administrative bodies," *id.* at 791 n.31. Furthermore, like general advocacy of public issues, the First Amendment protects grassroots lobbying as part of our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open." *Sullivan*, 376 U.S. at 270.

McConnell premised its facial upholding of the Federal Funds Restriction on national parties' using non-federal funds for "bogus issue advertising," 540 U.S. at 129, which were disguised "electioneering" ads, "designed to influence federal elections," *id*. at 131. And the FEC similarly argued that the Restriction's aim was the use non-federal funds for "campaign-related 'issue advocacy.'" Brief for Federal Election Commission at 71, *McConnell*, 251 F. Supp. 2d 176.

WRTL II has subsequently provided the means to distinguish bogus issue ads from genuine grassroots lobbying ads. 127 S. Ct. at 2659, 2667, 2669 n.7. That analysis must govern the present analysis as to grassroots lobbying by political parties. The Supreme Court held that WRTL's grassroots lobbying ads were not "electioneering" ads, but rather were constitutionally protected issue advocacy because they have a reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate. *Id.* at 2667. As discussed above, this appeal-to-vote test was the Court's application of the unambiguously-campaign-related principle in the context of electioneering communications. In applying this test to WRTL's grassroots lobbying ads the Court stated:

> WRTL's three ads are plainly not the functional equivalent of express advocacy. First, their content is consistent with that of a genuine issue ad: The ads focus on a legislative issue, take a position on the issue, exhort the public to adopt that position, and urge the public to contact public officials with respect to the matter. Second, their content lacks indicia of express advocacy: The ads do not mention an election, candidacy, political party, or challenger; and they do not take a position on a candidate's character, qualifications, or fitness for office.

Id. Although ads need not share all of these characteristics to be free from regulation under the appeal-to-vote test, *see id.*, the RNC's ads share all these characteristics. First, they focus on current legislative issues, *i.e.*, "Card Check" and the "Fairness Doctrine." The ads take a position on the respective issues, urge the public to adopt that position, and urge the public to contact their representatives or senators regarding the issue. Second, neither ad mentions any candidacy, candidate's character, election, or political party. SUF ¶ 16.

So the ads are not "campaign related," "bogus issue ads," or "electioneering," designed to influence federal elections. Rather, they are genuine grassroots lobbying ads, which are not "unambiguously related to the campaign of a particular federal candidate," *Buckley*, 424 U.S. at

80, and "the *quid-pro-quo* corruption interest cannot justify regulating them," *WRTL II*, 127 S. Ct. at 2672.[18]

Nor is the *McConnell* appearance-of-corruption theory, which arose from the "close relationship between federal officeholders and [] national parties," 540 U.S. at 154, and the "means by which parties [] traded on that relationship," *id.*, present here. As noted above, unlike the historical fundraising practices at issue in *McConnell,* here (1) no federal candidate or officeholder will solicit funds into the Grassroots Lobbying Account, (2) no contributor will receive preferential access to any federal officeholder, and (3) the RNC will use the account only for state activities. Therefore, there is no justification for treating the RNC differently than any other organization, such as WRTL, that has a constitutional right to use non-federal funds to participate in grassroots lobbying.

In short, the RNC's intended activities are not unambiguously campaign related. Funds from the Grassroots Lobbying Account will not be used to influence federal elections and the fundraising practices employed to raise such funds pose no appearance of corruption. Therefore, the relationship between any governmental interest in preventing corruption and the Federal Funds Restriction is "too remote," *Buckley*, 424 U.S. at 80, and the restriction "impermissibly broad," *id.*, as applied to the Grassroots Lobbying Account. To use the Supreme Court's words in *CARC*— the Restriction "does not advance a legitimate governmental interest significant enough to justify its infringement of First Amendment rights." 454 U.S. at 298. The Federal Funds Restriction is unconstitutional as applied to these activities.

---

[18] Indeed, *WRTL II* stated that the *quid pro quo* corruption interest "arguably applied" in *McConnell* did not extend beyond ads with an appeal to vote. *See* 127 S.Ct. at 2672.

Count 5: RNC & Duncan – State Elections Account

As applied to the the State Elections Account, the Federal Funds Restriction fails the unambiguously-campaign-related requirement. While these state accounts will support state activities, in elections where federal candidates are on the ballot, the RNC will target none of these activities to any federal candidate or campaign. SUF ¶ 19. That these state election activities might have the collateral affect of benefitting federal Republican candidates on the ballot with state candidates does not make these activities *"unambiguously* related to the campaign of a particular federal candidate." *Buckley*, 424 U.S. at 80 (emphasis added). Activities so indirectly benefitting federal candidates, if at all, cannot be said to create "obligated" or "grateful" office-holders. So any theory of corruption based on the "gratitude" of candidates is too attenuated when stretched to encompass activities so far removed from federal candidates and campaigns.

And as in the previous counts, the *McConnell* appearance-of-corruption theory, which arose from the "close relationship between federal officeholders and [] national parties," 540 U.S. at 154, and the "means by which parties [] traded on that relationship," *id.*, is absent here. As noted *supra*, unlike the historical fundraising practices at issue *McConnell,* here (1) no federal candidate or officeholder will solicit funds into any of the State Elections Accounts, (2) no contributor will have preferential access to any federal officeholder, and (3) the RNC will use the accounts only for state activities. So even to the extent that federal candidates collaterally benefit from these activities, there is no threat of "tallying," facilitation of "access," or other similar practices pointed to in *McConnell*. 540 U.S. at 146.

As applied to these State Elections Accounts, which are not unambiguously-campaign related, the governmental interest in preventing corruption and the Federal Funds Restriction is

"too remote," *Buckley*, 424 U.S. at 80, and "impermissibly broad," *id.* The Federal Funds Restriction is unconstitutional as applied to these activities.

Count 6: RNC & Duncan—Litigation Account & Building Account

As applied to the Litigation Account and Building Account, the Federal Funds Restriction fails the unambiguously-campaign-related requirement. Neither the activities nor the fundraising poses any threat of corruption or its appearance. The payment of the RNC's legal fees in matters not involving a federal candidate or campaign, and the paying the expenses related to the maintenance and upkeep of RNC's headquarters, is not spending "for the purpose of influencing federal elections." *McConnell*, 540 U.S. at 145. So donations to these Accounts poses no sufficient risk of creating "obligated" or "grateful" candidates. And like the preceding counts, no federal candidate or officeholder will solicit money into the Accounts, and no contributor will have preferential access to any federal officeholder. SUF ¶ 24.

As applied to the Litigation Account and Building Account, the governmental interest in preventing corruption is "too remote," *Buckley*, 424 U.S. at 80, and the Federal Funds Restriction is "impermissibly broad," *id.* The Federal Funds Restriction is unconstitutional as applied to these activities.

Count 7: Duncan – Solicitation for State Candidates and State Parties

The Federal Funds Restriction is unconstitutional as applied to Chairman Duncan's solicitation for state candidates and state parties, because the activity is not "unambiguously related to the campaign of a particular federal candidate." *Buckley*, 424 U.S. at 80. Chairman Duncan is not a federal officeholder or candidate. And the funds will be solicited to CRP and various 2009 candidates for state office in New Jersey and Virginia, not any federal candidate.

While Chairman Duncan will be grateful to contributors, Congress enacted the Federal Funds Restriction to prevent the corruption of candidates and officeholders, not party officials. And as noted above, the appearance of corruption arising from the sale of "access," *McConnell*, 540 U.S. 150-53, is absent here.

Chairman Duncan's solicitation of funds to state parties and candidates is not "unambiguously related to the campaign of a particular federal candidate." *Buckley*, 424 U.S. at 80. Therefore, these activities are beyond the proper reach of federal regulation and any government interest in preventing the appearance of corruption is "too remote," *Buckley*, 424 U.S. at 80, making the Federal Funds Restriction "impermissibly broad," *id*. The Federal Funds Restriction is unconstitutional as applied to these activities.

Count 8: CRP – California Initiative Support

Unlike national parties, which may not solicit or spend any non-federal funds, the ban on state and local parties' use of non-federal funds applies only to "federal election activity." 2 U.S.C. § 441i(b)(1). So limited, *McConnell* facially upheld the Federal Funds Restriction because it was sufficiently tailored to reach funds "that can be used to benefit federal candidates directly," which may create indebted officeholders and thereby pose a threat of corruption or its appearance. 540 U.S. at 167.[19] As discussed below, CRP's Letter does not directly benefit any federal candidate. Thus, it is not "unambiguously related to the campaign of a particular federal

[19] As noted above, because of the fundraising relationship between national parties and federal candidates and officeholders, *McConnell* stated that all contributions of non-federal funds to national parties were "suspect." 540 U.S. at 155. However, in regard to state parties, only contributions of state funds "used to benefit federal candidates directly" posed a sufficient risk of corruption to justify federal regulation. *Id.* at 167.

candidate." *Buckley*, 424 U.S. at 80. Therefore, the Federal Funds Restriction is unconstitutional as applied to the Letter.

Before turning to the letter, the standard of review should be discussed. CRP's proposed activity is not "unambiguously related to the campaign of a particular federal candidate," *Buckley*, 424 U.S. at 80, so it is fully protected under either strict scrutiny or intermediate scrutiny. However, strict scrutiny should apply to this state-party activity because, unlike national parties, state parties may solicit, receive, and use state funds, although not for federal election activity. CRP seeks not to receive state fund *contributions* to send out its letter – although it of course seeks donations to help fund its initiative effort – but to make an *expenditure* from its current state funds for the proposed activity.

McConnell applied intermediate scrutiny because it said that "it is irrelevant that Congress chose in § 323 to regulate contributions on the demand rather than the supply side." 540 U.S. at 138. It is true that *McConnell* mentioned state parties in this context, *id.* at 139, but *McConnell* did not explain how the Federal Funds Restriction's application to state parties, which already *have* state funds, would not be a regulation on *expenditures*. One may presume that the argument would be that Congress had limited state-fund solicitation and receipts to federal election activity. But that argument is at its weakest where the state political party already has state funds it wishes to use for the proposed *spending* and the Federal Funds Restriction then becomes a *spending* limit. Thus, the constitutional analysis as to CRP's planned *spending* should start where burdens

on expression normally start—with strict scrutiny, which *WRTL II* employed, 127 S. Ct. at 2663-64.[20]

However, whatever level of scrutiny applies, the law may ban the CRP only from using state funds for communications that are "unambiguously related to the campaign of a particular federal candidate." *Buckley*, 424 U.S. at 80. In the wake of *WRTL II's* appeal-to-vote test, the PASO terms are impermissibly overbroad when applied to the CRP's Letter.

McConnell facially upheld BCRA's ban on using state funds for communications that PASO federal candidates by noting the "overwhelming *tendency* [of such ads]. . .to benefit directly federal candidates. . . ." 540 U.S. at 170 (emphasis added). Citing "bogus issue advertising," *id.*, *McConnell* stated that "[s]uch ads were the prime motivating force behind BCRA's passage." *Id.* at 169. But as discussed above concerning RNC's grassroots lobbying ads, *WRTL II* has provided the means to distinguish bogus from genuine issue ads. *Id.* at 2667. So *McConnell*'s facial holding does not apply to genuine issue advocacy.[21]

Applying the analysis used in *WRTL II* reveals that CRP's Letter is not a "bogus issue ad" designed to influence federal elections. Rather, just like WRTL's ads, CRP's Letter has a

---

[20] *WRTL II* rejected the argument that, because *McConnell* had facially upheld the electioneering-communication ban, the FEC no longer had the strict scrutiny burden.127 S.Ct. at 2664. *WRTL II* said that "[t]hese cases, however, present the separate question whether § 203 may constitutionally be applied to these specific ads. Because BCRA § 203 burdens political speech, it is subject to strict scrutiny." *Id.* In the present case, the Restriction burdens political speech in the same way, i.e., by requiring the use of federal funds for the speech.

[21] It should be recalled that *Buckley* employed the express advocacy construction, to which *McConnell* likened some electioneering communications, 540 U.S. at 206 ("functional equivalent of express advocacy"), precisely to fulfill the unambiguously-campaign-related requirement. *Buckley*, 424 U.S. at 39-44, 80-81. Thus, the *WRTL II* analysis is a transferable illustration of how the unambiguously-campaign-related requirement must be applied in other First Amendment contexts, whether or not they involve express advocacy.

reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate. *Id.* at 2667. Therefore, the Letter is not "electioneering" or "campaign speech," *id.* at 2672-73, but is protected issue advocacy. The letter is about a ballot measure. Speaker Pelosi and Senator Boxer are mentioned because they (a) provide a readily-comprehensible means for potential donors and voters to evaluate the issue;[22] (b) are highly-influential, strong opponents of the potential ballot measure who have chosen to speak out against similar ballot measures[23] in the past and whose opposition must be overcome *on the ballot-initiative issue* in the marketplace of ideas if such an initiative is to succeed; and (c) are California politicians familiar to the target audience and their involvement may motivate some recipients of the Letter to get involved, donate, and vote for an initiative. So the CRP's use of Speaker Pelosi's and Senator Boxer's

---

[22]The Ninth Circuit made this observation concerning California ballot initiatives:

> "Even more than candidate elections, initiative campaigns have become a money game, where average citizens are subjected to advertising blitzes of distortion and half-truths and are left to figure out for themselves which interest groups pose the greatest threats to their self-interest." David S. Broder, *Democracy Derailed: Initiative Campaigns and the Power of Money* at 18 (2000). Knowing which interested parties back or oppose a ballot measure is critical, especially when one considers that ballot-measure language is typically confusing, and the long-term policy ramifications of the ballot measure are often unknown. At least by knowing who backs or opposes a given initiative, voters will have a pretty good idea of who stands to benefit from the legislation.

California Pro-Life Council v. Getman, 328 F.3d 1088, 1105-06 (9th Cir. 2003).

[23]*See*, *e.g.*, *Shame on Pelosi: Redistricting Fix on Brink Because of Speaker*, San Diego Union-Tribune, Sept. 11, 2007, available at http://www.signonsandiego.com/uniontrib/20070911/news_lz1ed11middle.html; John Wildermuth, *REDISTRICTING: Incumbents Team Up to Oppose Schwarzenegger on Prop. 77*, San Francisco Chronicle, Aug. 26, 2005 available at http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2005/08/26/BAG46EDCNJ1.DTL&hw=incumbents+team+up+to+oppose&sn=001&sc=1000; Glen Justice, *Lawmakers Win Bid to Raise Soft Money in California Case,* N.Y. Times, Aug. 19, 2005, available at http://www.nytimes.com/2005/08/19/politics/19elect.html.

names are for reasons consistent with genuine issue advocacy. And the Letter "lacks indicia of express advocacy," *id.* at 2667, because it makes no mention of Speaker Pelosi's or Senator Boxer's candidacy, or any electoral opponent, or their "character, qualifications, or fitness for office," *id.* It does mention voting, Democrats, and Republicans, but only because those subjects are necessary to the redistricting issue.

In short, the Letter is not unambiguously campaign related. The Letter is genuine issue advocacy,[24] which does not directly benefit any federal candidate and therefore poses no threat of corruption or its appearance. Therefore, the relationship between any governmental interest in preventing corruption and the Federal Funds Restriction is "too remote," *Buckley*, 424 U.S. at 80, and the restriction "impermissibly broad," *id.*, as applied to the Letter. To use the Supreme Court's words in *CARC*— the Restriction "does not advance a legitimate governmental interest significant enough to justify its infringement of First Amendment rights." 454 U.S. at 298. The Federal Funds Restriction is unconstitutional as applied to the CRP's communication.

---

[24]In determining the meaning of political speech the Court may consider only the substance of the communication, *WRTL II,* 127 S.Ct. at 2666 (citing *Buckley,* 424 U.S. at 43-44), and not the context, such as the CRP's intent, *id.* at 2665-55, the letter's effect, *id.* at 2665, 2666 & n.5, its impact on an election, *id.* at 2667-68, or what the letter does *not* say. *Id.* at 2668. Nor may the Court consider what the CRP said elsewhere*, id.,* including the CRP's opposition to Speaker Pelosi in other contexts, *id.*, nor the timing of the letter, *id.* at 2668; *see also In re Media Fund*, MUR 5440, Tr. of Probable Cause Hr'g at 35-37 (March 21, 2007) (rejecting a commissioner's longstanding suggestion that timing determines whether "Boot Newt" is express advocacy), *available at* http://eqs.nictusa.com/eqsdocs/0000668A.pdf, nor whether the ballot initiative has become a campaign issue, *WRTL II,* 127 S.Ct. at 2669, nor whether there is a federal-funds alternative, *id.* at 2671 n.9, nor whether the CRP could change its letter to avoid mentioning a candidate. *Id.* The substance of the communication is what counts, and it is all that counts. *See id.* at 2666 (citing *Buckley,* 424 U.S. at 43-44). And where there is any doubt, "we give the benefit of the doubt to speech, not censorship." *Id.* at 2674.

Count 9: CRP – Non-targeted Election Activity

Like the other activities, the CRP's intended non-targeted election activity are not "unambiguously related to the campaign of a particular federal candidate." *Buckley*, 424 U.S. at 80. While this state election activity will occur in elections where federal candidates are on the ballot, none of these activities will target any federal candidate or campaign. SUF ¶¶ 45, 62. That these state election activities might have the collateral affect of benefitting federal Republican candidates on the ballot with state candidates does not make these activities *"unambiguously* related to the campaign of a particular federal candidate." *Buckley*, 424 U.S. at 80 (emphasis added). Activities so indirectly benefitting federal candidates, if at all, cannot be said to create "obligated" or "grateful" officeholders. So any theory of corruption based on the "gratitude" of candidates is too attenuated when stretched to encompass activities so far removed from federal candidates and campaigns.

As applied to this activity, which is not unambiguously-campaign related, the governmental interest in preventing corruption and the Federal Funds Restriction "too remote," *id.* at 80, and "impermissibly broad," *id.* The Federal Funds Restriction is unconstitutional as applied to these activities.

Conclusion

For the foregoing reasons, Plaintiffs respectfully submit that the Court should grant their summary judgment motion.

Respectfully submitted,

/s/ James Bopp, Jr.

James Bopp, Jr., Bar #CO0041
Richard E. Coleson*
Clayton J. Callen*
Kaylan L. Phillips*
BOPP, COLESON & BOSTROM
1 South Sixth Street
Terre Haute, IN 47807-3510
812/232-2434 telephone
812/234-3685 facsimile
Lead Counsel for all Plaintiffs
*Pro Hac Vice

Charles H. Bell, Jr.*
Bell, McAndrews & Hiltachk, LLP
455 Capitol Mall, Suite 801
Sacramento, CA 95814
Tel: (916) 442-7757
Fax: (916) 442-7759
cbell@bmhlaw.com
Counsel for California Republican Party and Republican Party of San Diego County

United States District Court
District of Columbia

Republican National Committee et al., ***Plaintiffs***, ***v.*** **Federal Election Commission**, ***Defendant.***	**Case No.** 08-1953 (BMK, RJL, RMC) THREE-JUDGE COURT

Plaintiffs' Statement of Undisputed Material Facts

Republican National Committee has moved for summary judgment in its favor. Fed. R. Civ. P. 60. In support of that motion, RNC provides this statement of material facts with references to supporting evidence. LCvR 7(h).[1]

1. Plaintiff Republican National Committee ("RNC") "ha[s] the general management of the Republican Party, subject to direction from the national convention." Rule 1, *Rules of the Republican Party* (2004). It is "[a] national committee of a political party" under 2 U.S.C. § 441i(a). Complaint ¶ 11.

2. Plaintiff California Republican Party is the state Republican Party of California. It is "a State . . . committee of a political party" under 2 U.S.C. § 441i(b)(1). Complaint ¶ 12.

3. Plaintiff Republican Party of San Diego is a "local committee of a political party" under 2 U.S.C. § 441i(b)(1). Complaint ¶ 13.

[1]**Key to Evidentiary Citations:** Plaintiff's Complaint for Declaratory and Injunction Relief (Dkt. #1) = Complaint; Affidavit of Richard Clinton Beeson (Exhibit 1) = Beeson Aff.; Affidavit of Robert M. "Mike" Duncan (Exhibit 2) = Duncan Aff.; Declaration of Bill Christiansen (Exhibit 3) = Christiansen Dec.; Declaration of Jonathan Buettner (Exhibit 4) = Buettner Dec.; Declaration of Barrett Tetlow (Exhibit 5) = Tetlow Dec.

4. Plaintiff Robert M. (Mike) Duncan is the National Committeeman of the Kentucky Republican Party and the RNC Chairman, in which capacity he is RNC's chief executive officer. Complaint ¶ 14.

5. Defendant Federal Election Commission ("FEC") is the government agency with enforcement authority over FECA. Complaint ¶ 15.

6. As a national political party committee, the RNC has historically participated and participates today in electoral and political activities at the federal, state and local levels. The RNC seeks to advance its core principles by advocating Republican positions, electing Republican candidates and encouraging governance in accord with Republican views at the federal, state and local levels. *McConnell*, 251 F. Supp.2d at 335 (citations omitted) (Judge Henderson's findings). The RNC "has historically participated and participates today in electoral and political activities at the federal, state and local levels." *Id.* These activities in state and local elections "are substantial both in their importance to the RNC's mission and in their resource commitment." *Id.* "Even for elections in which there is no federal candidate on the ballot, the RNC trains state and local candidates, donates to state and local candidate campaign committees, funds communications calling for the election or defeat of state and local candidates and engages in get-out-the-vote activities." *Id.* at 336.

7. "The RNC seeks to advance its core principles by advocating Republican positions, electing Republican candidates and encouraging governance in accord with Republican views at the federal, state and local levels." 251 F. Supp. 2d at 335 (Judge Henderson's findings).

8. The RNC intends to (a) create a **New Jersey Account** for state funds (non-federal funds subject to state regulation) subject to New Jersey state law, (b) solicit state funds into the account

under New Jersey state law, and (c) use those funds to support state Republican candidates in the November 2009 election. Because New Jersey holds its state elections in odd numbered years, there will be no federal candidates on the 2009 ballot. Beeson Aff. ¶ 3.

9. The RNC plans to use funds from the New Jersey Account to make direct contributions to New Jersey state and local candidates according to state law limits. At this time, the RNC does not know the specific candidates that it will support, as the party rules preclude it from supporting pre-primary candidates unless (1) the candidate is unopposed or (2) it receives prior written and filed approval of all RNC members from the state in question. The RNC plans to use these funds to make independent expenditures advocating the election of the New Jersey Republican gubernatorial nominee, specific advertising and direct mail for the entire Republican ballot in New Jersey, and for get-out-the-vote ("GOTV") calls. None of these activities would clearly identify any federal candidate. Beeson Aff. ¶ 4.

10. The RNC intends to (a) create a Virginia Account for state funds subject to Virginia state law, (b) solicit state funds into the account under Virginia state law, and (c) use those funds to support Republican candidates for the November 2009 election. Like New Jersey, Virginia also holds its elections for state office in odd numbered years. Therefore, there are no federal candidates on the 2009 Virginia ballot. Beeson Aff. ¶ 5.

11. The RNC plans to use funds from the Virginia Account to make direct contributions to legislative races. Such contributions are especially important to maintain the Republican majority in the state assembly before redistricting. The RNC plans to directly coordinate campaign activities with the Republican gubernatorial nominee and place GOTV calls. None of these activities would clearly identify any federal candidate. Beeson Aff. ¶ 6.

12. Virginia is especially important to the RNC's political strategy for several reasons: (1) Virginia has traditionally been a stronghold for Republicans, and the RNC is looking forward to recapturing this "red state"; (2) maintaining a Republican majority in the state assembly is crucial to influencing the state's redistricting; (3) the current Democrat frontrunner for governor, Terry McAuliffe, a former Democratic National Committee ("DNC") chairman, has extremely high name recognition; (4) the appointment of Governor Tim Kaine as DNC chairman puts a national focus on the Virginia gubernatorial race. Beeson Aff. ¶ 7.

13. The RNC intends to (a) create a Redistricting Account, for non-federal funds and state funds subject to state law, (b) solicit funds into the account under applicable state laws, and (c) use those state funds to support the redistricting efforts of various states' Republican parties after the 2010 census. Beeson Aff. ¶ 8.

14. The Redistricting Account would provide resources for political activity related to winning state legislative races; technology and staffing to support the data compilation, analysis, and map drawing related to redistricting; and litigation efforts and other legal fees related to redistricting. The political components would involve two primary objectives: (1) the hiring of political and communications staffers to develop and execute a political strategy related to redistricting, and (2) the use of the RNC's State Elections Accounts to advance redistricting goals by supporting state legislative candidates nationwide. The Redistricting Account would support data analysis and map drawing primarily in the following ways: (1) the hiring of data management and census data experts; and (2) the purchasing of hardware and software to support the RNC's redistricting efforts. The Redistricting Account would also support the legal component of the RNC's redistricting efforts through hiring additional in-house legal staff with expertise in redistricting and enabling the RNC

to hire outside counsel to assist in redistricting related litigation. Beeson Aff. ¶ 9.

15. The RNC intends to (a) create a Grassroots Lobbying Account, for non-federal funds, (b) solicit non-federal funds into the account, and (c) use those funds to support grassroots lobbying efforts for federal legislation and issues important to the Republican Party's platform. Beeson Aff. ¶ 10.

16. The RNC intends to use the Grassroots Lobbying Account to pay for radio, television, and internet grassroots lobbying advertisements on relevant public-policy issues. The first two issues the RNC would like to address are issues being debated by the 111th Congress: (1) "card check" legislation, which allows unionization without secret-ballot elections for workers; and (2) legislation to revive the "Fairness Doctrine," which would require radio station owners to provide equal time on matters of public importance or risk losing their broadcast licenses. The following are true and correct copies of ads that RNC intends to broadcast:

Card Check
Secret Ballot
[Text of radio ad]

> Today, when workers vote on whether to join a union, they use a secret ballot. Just like we use for any public election.
> But, some in Congress and their labor union allies want to change that.
> The "Employee Free Choice Act" is about anything but free choice. The legislation would establish a card check scheme that would strip employees of the right to vote in private when deciding whether to join a union.
> Under the card check scheme, secret ballot voting is eliminated. Every worker's vote is public. There is no protection against intimidation or coercion, and no guarantee that workers would be able to vote their true wishes.
> We elect our members of Congress by secret ballot. Why should millions of Americans be stripped of that right?
> Call [insert Representative/Senator name] and tell him [her] to stand up to the union special interests. Tell him [her] to oppose card check legislation.

Secret Ballot

[Concept for television/internet ad]

Viewers see a parent with a child while the parent votes in an election. The parent is teaching the child about the role of the secret ballot in democracy only to have "union goons" grab the parent away from the child and force the parent to vote on whether to form a union in a huge public arena (possibly a game show). The child cries out, "Daddy/Mommy, what happened to democracy?" and the evil game show host says, "Not when it comes to unions, kid."

Fairness Doctrine
Freedom of Speech
[Text of radio ad]

Freedom of speech. One of our most fundamental rights.
So, why is it that some in Congress want to censor speech on the airwaves?
Do they not trust Americans to think for themselves?
Are they that frightened of their critics?
The Fairness Doctrine was killed off more than 20 years ago, because it was anything but fair. Yet, some in Congress are pushing legislation to bring the doctrine back and require broadcasters to present opposing viewpoints on controversial issues of public importance.
Let's face the facts.
The Fairness Doctrine is nothing more than a clear attack on free speech.
It would give total control of the public airwaves to the government, and allow the government to dictate the kind of news and opinions that broadcasters choose to air.
The freedom is speech is central to our democracy. We must protect it.
Call [insert Representative/Senator name] and tell him [her] to tell him [her] to oppose any efforts to bring back the Fairness Doctrine.

Beeson Aff. ¶ 11.

17. The RNC intends to (a) create several State Elections Accounts, for state funds, (b) solicit state funds into the accounts, and (c) use those funds exclusively to support state candidates in various states. The funds would be solicited and spent in accordance with any applicable state law. The RNC intends to support state candidates from this Account in elections where only state candidates appear on the ballot and in elections where both federal and state candidates appear on the ballot. Beeson Aff. ¶ 12.

18. The RNC plans to use funds from the State Elections Accounts to make direct contributions to state and local candidates. Several states permit unlimited contributions to candidates and/or corporate contributions to candidates. The RNC is looking to compete on an equal playing field in these states. It will also use these funds for independent expenditures for Republican state and local candidates, specific advertising and direct mail for the entire Republican ballot, and GOTV calls. Beeson Aff. ¶ 13.

19. All of these activities using funds from the State Elections Accounts will be aimed at state candidates and state elections. None of the activities will in any way identify, reference, or otherwise depict any federal candidate. Beeson Aff. ¶ 14.

20. The RNC intends to solicit non-federal funds into a Litigation Account. The RNC plans to use funds from the Litigation Account for costs associated with litigation challenging BCRA and other miscellaneous litigation not related to federal elections. Beeson Aff. ¶ 15.

21. The RNC intends to solicit non-federal funds into a Building Account exclusively for maintenance and upkeep of the RNC's headquarters. Beeson Aff. ¶ 16.

22. Before BCRA, non-federal funds were critical to sustaining the RNC's Building Fund. Since then, the RNC has had to divert federal funds to such uses as replacing the building's generator and fixing aging elevators. Every dollar of federal funds used for those items takes away from the RNC's ability to reach out directly to voters and engage new voters in the political process. Beeson Aff. ¶ 17.

23. The RNC is ready and able to do all these activities but cannot because it is permitted to solicit and use only federal funds. So, unless the RNC obtains judicial relief, it will not create any of the above accounts for non-federal and state funds. In addition to the activities listed above, the

RNC would like to participate in materially similar activities in the future. Beeson Aff. ¶ 18.

24. The RNC will not aid contributors to any of the accounts in obtaining preferential access to federal candidates or officeholders. For example, the RNC will not, in any manner different than or beyond that currently afforded to contributors of federal funds: (1) encourage officeholders or candidates to meet with or have other contact with contributors to these accounts, (2) arrange for contributors to participate in conference calls with federal candidates or officeholders, or (3) offer access to federal officeholders or candidates in exchange for contributions. Furthermore, the RNC will not use any federal candidates or officeholders to solicit funds for any of the Accounts. Beeson Aff. ¶ 19.

25. Since 2003, the Republican Party, as an institution, has changed due to leadership and staff turnover. Political majorities across the country have also shifted, making certain races more important than others at any given time. For example, Virginia, once a Republican stronghold, went for a Democrat candidate in 2008. Beeson Aff. ¶ 20.

26. As a party, the RNC has lived under BCRA for three cycles. The potential problems the RNC identified in its briefs before the *McConnell* Court are even more acute than anticipated. For example, the rise of 527s (and the resulting failure of the FEC to regulate them) has left the RNC at a fundraising disadvantage for a host of its activities. Similarly, the RNC has been negatively affected by the explosion of internet fundraising, barriers to collaborative relationships between national party and state parties, and inequality of restrictions on a party's ability to raise and spend funds. Beeson Aff. ¶ 21.

27. As the current Chairman of the RNC, Mike Duncan intends to **(1)** solicit contributions of state funds and non-federal funds to RNC's New Jersey Account, Virginia Account, Redistricting

Account, Grassroots Lobbying Account, State Elections Accounts, Building Account, and Litigation Account; **(2)** solicit contributions of state funds to the California Republican Party; and **(3)** solicit contributions of state funds to the campaigns of Republican candidates for state office appearing on the November 2009 ballot in New Jersey and Virginia. Duncan Aff. ¶ 3.

28. Duncan intends to make the described solicitations in his official capacity as RNC Chairman on behalf of the RNC, that is., as an "officer or agent acting on behalf of such a national committee." 2 U.S.C. § 441i(a)(2). Duncan Aff. ¶ 4.

29. Duncan intends to (a) attend and be a featured guest at state candidate campaign events/fundraisers and solicit contributions for specific state candidates at such events, (b) sign and send letters and emails soliciting such contributions from RNC donors and other potential donors, and (c) make telephone calls to solicit such contributions from RNC donors and other potential donors. Duncan Aff. ¶ 5.

30. Duncan will not provide any donor who gives funds in response to the above solicitations with any preferential access to any federal candidate or officeholder. Duncan Aff. ¶ 6.

31. Duncan is ready and able to do this activity, and would do this activity but for the fact that 2 U.S.C. § 441i(a) makes it a crime. Unless he is able to obtain judicial relief he will not do this activity. Duncan intends to solicit state funds and non-federal funds in materially similar situations in the future, if permitted. Duncan Aff. ¶ 7.

32. California Republican Party ("CRP") supports Republican nominees for partisan elective offices in general elections, particularly in contested races. CRP is prohibited from and does not support candidates for partisan elective office at primary elections. Thus, CRP's potential federal candidate support activity does not take place in any regular primary election. CRP also supports

candidates for non-partisan offices at the state and local levels. The statewide offices of Insurance Commissioner and Superintendent of Public Instruction are not partisan offices. Local offices are all non-partisan (Art. II, sec. 6(a), Cal. Const.). Christiansen Dec. ¶ 3.

33. California holds its Direct Primary on the first Tuesday after the first Monday in June and its statewide general election on the first Tuesday after the first Monday in November. California holds a standalone Presidential Primary election on the first Tuesday in February in even numbered years divisible by four. CEC § 1202. Christiansen Dec. ¶ 4.

34. California law permits local jurisdictions to set their election dates and consolidate those elections with the Direct Primary and the statewide general election, so that state and local officer elections may be held on those dates which are regular federal election dates. Candidates for state and local elective offices appear on the ballot with candidates for federal offices. Christiansen Dec. ¶ 4; Buettner Dec. ¶ 5.

35. Since the enactment of Proposition 34 in 2000, CRP has engaged in substantial support of candidates for partisan offices at the state level, and more recently in the 2006 and 2008 elections, CRP has engaged in local candidate support. This activity included contributions, coordinated expenditures, and member communication expenditures in support of candidates for state offices at elections held in 2002, 2003, 2004, 2006, and 2008, and member communication expenditures in support of candidates for local offices, most of the latter in 2006 and 2008. Christiansen Dec. ¶ 6.

36. CRP has spent little money supporting federal candidates, either before or after BCRA was adopted, because California has had very few competitive Congressional districts since 2001. As noted above, CRP does not support any federal candidates in primary elections. Christiansen Dec. ¶ 7.

37. Because California's U.S. Senate seats have been held by Democrat incumbents since 1994, CRP has spent little funds on campaign activities in support of Republican nominees for those offices. CRP has not made any significant coordinated expenditures in a U.S. Senate race since 1998. Christiansen Dec. ¶ 8.

38. Because California's Congressional seats were redistricted in 2001 to virtually eliminate partisan competition at general elections, CRP has not engaged in any substantial contribution or "coordinated expenditures" under 2 U.S.C. § 441a(d) for 2002, 2004, 2006, and 2008. In 2002, CRP contributed $10,000 to California Congressional candidates that were not in highly contested races. CRP made "coordinated expenditures" totaling $86,275 to three candidates, one in a contested general election race (CD 22). In 2004, CRP made one $5,000 contribution in a contested California congressional race, and $72,650 in coordinated expenditures in support of David Dreier (CD 26) – a race that was not seriously contested. In 2005-2006, CRP made coordinated expenditures of $11,013 in one special Congressional race (Campbell – CD 48) and in 2006, CRP paid filing fees for 17 Congressional candidates in non-contested races totaling $27,557, and one coordinated expenditure on behalf of David Dreier (CD 26) totaling $41,775. In 2007-2008, despite spending $17,268,249 in federal funds, CRP made no contributions or independent expenditures, and only $41,660 in coordinated expenditures (Rohrabacher – CD 46) on behalf of federal candidates. Thus, between 2002 and 2008, CRP engaged in coordinated expenditure activity in fewer than four contested general election races out of 216 Congressional elections. After enactment of BCRA's FEA PASO provisions in 2002, CRP stopped including federal candidates on its slate mailings and stopped identifying federal candidates entirely in absentee ballot application, chase mailings, and similar voter communications for the 2002, 2004, 2006, and 2008 elections. Christiansen Dec. ¶ 9.

39. In 2002, CRP spent $6,467,968 supporting 16 candidates for state elective offices with endorsement communications (mailings, party slate cards, broadcast and cablecast communications). In 2003-2004, CRP spent $5,680,352 supporting 46 candidates for state elective offices with endorsement mailings, broadcast and cablecast communications and non-advocacy issue oriented mailings. In 2005-2006, CRP spent $8,787,102 supporting 36 candidates for state elective offices with endorsement mailings, member communication mailings, broadcast communications, and non-advocacy issue-oriented mailings as well as supporting several dozen candidates for local offices with member communication mailings. In 2007-2008, CRP spent $5,710,795 supporting 11 candidates for state elective offices with endorsement mailings, member communication mailings, broadcast communications, and non-advocacy issue-oriented mailings, as well as supporting nearly 100 candidates for local offices with member communication mailings. CRP's expenditures for the support of state and local candidates in four elections totaled $26,646,217. Christiansen Dec. ¶ 10.

40. From 2003 to 2008, CRP spent barely more than 1% of the total of $26,942,147 spent on all candidates for federal candidate support. Christiansen Dec. ¶ 11.

41. CRP has eschewed including any communications that clearly identify federal candidates and contain words that promote, attack, support, or oppose such federal candidates in its state and local candidate support communications, or in its state and local ballot measure endorsement communications, because of BCRA's requirement that such communications would have to be paid entirely with federal funds under 2 U.S.C. § 441i(b)(2)(B) and 2 U.S.C. § 431(20). According to Bill Christiansen, the Chief Operating Officer of the CRP, using only federal funds for such communications would virtually eliminate CRP's ability to engage in such state and local candidate and ballot measure activity because of the severe, adverse impact on these fundamental state and

local campaign programs. Christiansen Dec. ¶ 12.

42. CRP spent $7,768,683 on voter registration activities from 2003 to 2008, as reflected on its FEC reports. Of this, a substantial portion, in excess of the federally required minimum percentage, was paid with hard federal dollars. Christiansen Dec. ¶ 13.

43. CRP spent $619,372 on voter identification and GOTV activities from 2003 to 2008, as reflected on its FEC reports. All or virtually all of these payments were made with federal funds or federal Levin funds. Christiansen Dec. ¶ 14.

44. Between 2003 and 2008, CRP spent $51,673,117 from its federal account, according to FEC reports. During this same time it spent $94,395,279 from its non-federal account, of which $18,595,745 was for transfers to the federal account for allocable activity expenses. Christiansen Dec. ¶ 15.

45. CRP intends to use state funds to participate in GOTV, voter identification, and voter registration activities, as defined in 2 U.S.C. § 431(20), in future elections for state and local candidates. None of this "Federal election activity" would be targeted to any federal candidate, *i.e.*, it would not reference, describe, or otherwise depict any federal candidate. This activity is prohibited by 2 U.S.C. § 441i(b). Absent the requested judicial relief CRP will not engage in these activities. Christiansen Dec. ¶ 16.

46. CRP has spent $18,130,187 in support of or opposition to statewide ballot measures since 2002. Christiansen Dec. ¶ 17.

47. CRP believes that the endorsement and opposition of ballot measures are enhanced by the ability freely to associate Democrat federal officeholders with ballot measures that CRP opposes, and to associate Republican officeholders with CRP endorsed ballot measures. Christiansen Dec. ¶

18.

48. At the September 7, 2007 CRP Convention Meeting in Indian Wells, CRP endorsed or opposed a number of ballot measures for the 2008 statewide ballots. In September 2008, it endorsed or opposed several measures that have already qualified to appear on the June 3, 2010 statewide election ballot; and it is likely to endorse and oppose some of the current measures placed on the June 2010 statewide ballot at the February, 2009 Convention Meeting in Sacramento. Christiansen Dec. Memorandum (Jan. 15, 2009).

49. San Diego Republican Party ("SDRP") supports Republican nominees for partisan elective offices nominated at the Direct Primary. (California Elections Code § 316). However, SDRP does not support candidates for partisan elective offices, including federal Congressional and U.S. Senate offices, in contested partisan primary elections. Buettner Dec. ¶ 3.

50. Local offices are all non-partisan (Art. II, sec. 6(a), Cal. Const.), and SDRP actively supports candidates for local offices, including candidates for city councils, member of the county board of supervisors, and local school districts. Buettner Dec. ¶ 4.

51. For state offices, under the California Political Reform Act ("CPRA"), political parties are permitted by state policy to support candidates for state elective offices with unlimited contributions, "coordinated expenditures" and "member communications" on their behalf. (CGC §§ 85400(c), 85312.) Political parties are permitted to make unlimited contributions to local candidates where local law does not impose limitations, and unlimited "member communications" on behalf of such candidates, coordinated with the local candidates, irrespective of any local limitations on contributions or independent expenditures. (CGC §§ 85312, 85703.) SDRP has an active program to endorse and support local candidates using member communications and where available, direct

contributions. Buettner Dec. ¶ 6; Christiansen Dec. ¶ 5.

52. For local offices, some jurisdictions have their own local campaign law regulations. San Diego, for example, prohibits business entities including corporations from making any contributions to city candidates or to committees that support city candidates, whether those committees make direct contributions or "independent expenditures." San Diego Municipal Code § 27.2947. Buettner Dec. ¶ 7.

53. Since the enactment of Proposition 34 in 2000, SDRP has engaged in substantial support of candidates for partisan offices at the state level and local non-partisan candidates. This activity has included a smaller amount of contributions, coordinated expenditures and member communication expenditures in support of statewide candidates on the ballot in 2003, 2004, 2006, and 2008 and state candidates whose jurisdictions include San Diego County, and member communication expenditures for candidates for local offices in all elections since 2001. Buettner Dec. ¶ 8.

54. Because California's U.S. Senate seats have been held by Democrat incumbents since 1994, SDRP has not spent any funds on campaign activities in support of Republican nominees for those offices. Buettner Dec. ¶ 9.

55. Because California's Congressional seats were redistricted in 2001 to virtually eliminate partisan competition at general elections, SDRP has not engaged in any substantial contribution or "coordinated expenditures" under 2 USCA §441a(d) for 2002, 2004, 2006, and 2008. Buettner Dec. ¶ 10.

56. SDRP inaugurated a local candidate support program in 2002 and has endorsed hundreds of candidates for local offices on endorsement mailings or party slate cards during the elections from

2002-2008. At the November 4, 2008 general election, SDRP endorsed over one hundred candidates for local offices on its endorsement slate mailings. None of these endorsement mailings included any federal candidates because of the restrictions of BCRA, 2 U.S.C. §441i(b)(2)(B) and 2 U.S.C. § 434(20). Buettner Dec. ¶ 11.

57. SDRP spent $861,269 (or 61%) of its $1,408,617 in expenditures on state and local candidate support activities in 2006. That election cycle did not include a San Diego City mayoral or city attorney race, unlike 2004 and 2008. In 2004, it spent $1,257,842 (or 69%) of its total of $1,816,055 in expenditures that election year. In 2008, SDRP spent $1,927,970 of its $2,717,753 total expenditures on expenditures related to state and local candidate support, while it spent only $2,384 in federal candidate support activity. None of the state and local candidate support activity unambiguously relates to any federal election or candidate. The very limited amount of SDRP's federal candidate support included independent expenditures on behalf of 5 county-jurisdiction congressional candidates (including two safe seats, one open but safe seat, and two Democrat-incumbent seats) and $550 in contributions to McCain for President. Spending on federal candidates in the 2008 Presidential election amounted to 9/100ths of 1% of the total 2008 expenditures, and 1/10th of 1% of combined federal and state or non-federal expenditures. Buettner Dec. ¶ 12.

58. Because SDRP is required to spend significant federal funds and Levin funds for "Federal election activity," *see* 2 U.S.C. 441i(b), and those same dollars are prized for local uses because of the City of San Diego prohibitions (SDMC 27.2947), SDRP has been precluded from engaging in more local candidate support activity than done from 2003 to 2008. Buettner Dec. ¶ 13.

59. SDRP occasionally has endorsed, supported and opposed state and local ballot measures on its member communication mailings that have featured state and local, but not federal candidates.

On occasion, SDRP has considered whether or not to include statements that support or attack a federal candidate in order to persuade voters of San Diego County to vote for or against the SDRP position on such ballot measures. However, SDRP has declined to include such language due to the BCRA requirement that such communications, even related to state or local ballot measures, must be paid wholly with hard federal dollars. Buettner Dec. ¶ 14.

60. SDRP would like to support and oppose state and local ballot measures in the future. As part of this effort, SDRP intends to use public communications which clearly identify federal candidates and contain words promoting or opposing such candidates. Tetlow Dec. ¶ 3.

61. SDRP believes that the endorsement and opposition of ballot measures are enhanced by the ability freely to associate Democrat federal officeholders with ballot measures that CRP opposes, and to associate Republican officeholders with SDRP endorsed ballot measures. Tetlow Dec. ¶ 4.

62. SDRP intends to use state funds to participate in GOTV, voter identification, and voter registration activities, as defined in 2 U.S.C. § 431(20), in future elections for state and local candidates. None of this "Federal election activity" would be targeted to any federal candidate, *i.e.* it would not reference, describe, or otherwise depict any federal candidate. This activity is prohibited by 2 U.S.C. § 441i(b). Absent the requested judicial relief, SDRP will not engage in these activities. SDRP intends to use state funds in materially similar situations in the future, if permitted. Tetlow Dec. ¶ 5.

63. CRP and SDRP intend to support efforts to change the way Congressional redistricting is done in California. To that end, CRP and SDRP intend to use state funds to distribute a Letter which will qualify as a public communication, 2 U.S.C. § 431(22) ("public communication" definition). Although "attack" and "oppose" are undefined in the definition of "federal election

activity," 2 U.S.C. § 431(20)(A)(iii), CRP and SDRP believe that this public communication will "attack" or "oppose" Nancy Pelosi and Barbara Boxer, as these terms are used in the definition of "federal election activity," and so they are prohibited from using state funds for this communication. 2 U.S.C. § 441i(b)(1). Absent the requested judicial relief, CRP and SDRP will not undertake this activity. CRP and SDRP intend to use state funds in materially similar situations in the future, if permitted. Christiansen Dec. ¶ 19; Tetlow Dec. ¶ 6.

64. The text of the Letter that CRP and SDRP wish to distribute is:

Dear *****:

Nancy Pelosi and Barbara Boxer don't want you to read this letter. They want to keep California voters from effectively choosing their Congressional representatives.

The Democrats seek to preserve their stranglehold on California's government and perpetuate the gerrymandered Congressional districts that allow fifty thousand voters to elect a Democrat to Congress from District 43 while over one hundred and twenty thousand voters are required to elect a Republican to Congress in each of Districts 2, 3, 4, 22, 24, 46, and 48 – ample proof of the maxim that under our current, scandalous redistricting system in California "the voters don't choose their representatives, the representatives choose their voters."

The California Constitution allows State Legislators to draw the political boundaries in the state. This means Legislators get to draw the boundaries for the Assembly, State Senate, and Congressional districts. In essence, this allows the Legislators to determine what voters they want to represent in order to guarantee themselves, and their political party, re-election.

Political boundaries are re-drawn every ten years. In 2001, the State Legislators used new, hi-tech computers to draw up the political boundaries and guarantee themselves and their party re-election year after year. These computers did such a good job that a seat has switched hands from one political party to another only 3 times in the last six years, despite the fact that the People of California have a less favorable opinion of the State Legislature and Congress than at any other point in modern history.

When politicians are guaranteed re-election, they stop listening to the People and act out of their own self-interest. A lack of competitive elections has led to do-nothing legislative grid-lock and Legislators overspending our tax dollars in order to pay back their political contributors.

We need to make a change, but Nancy Pelosi and Barbara Boxer will do everything they can to stop a change from happening. Help us take a stand for fairness and accountability in California elections. Support us in our effort to qualify a ballot measure that will give the power of drawing political boundary lines to the People and

make elections competitive again. Help bring democracy back to California.

You can help the California Republican Party in this effort by making your contribution to our initiative qualification efforts. Please give $100, $25, or whatever you can to support this effort. With your help, we can begin the process of making California government about the People, not the politicians.

Christiansen Dec. Memorandum and Letter (Jan. 15, 2009); Tetlow Dec. ¶ 6

Respectfully submitted,

/s/ James Bopp, Jr.

James Bopp, Jr., D.C. Bar #CO0041
Richard E. Coleson*
Clayton J. Callen*
Kaylan L. Phillips*
BOPP, COLESON & BOSTROM
1 South Sixth Street
Terre Haute, IN 47807-3510
812/232-2434 telephone
812/235-3685 facsimile
* pro hac vice motion granted
Counsel for Plaintiff

Charles H. Bell, Jr.*
Bell, McAndrews & Hiltachk, LLP
455 Capitol Mall, Suite 801
Sacramento, CA 95814
Tel: (916) 442-7757
Fax: (916) 442-7759
cbell@bmhlaw.com
Counsel for California Republican Party and Republican Party of San Diego County

Exhibit 1

United States District Court
District of Columbia

Republican National Committee et al., ***Plaintiffs,*** ***v.*** **Federal Election Commission**, ***Defendant.***	**Case No.** 08-1953 (BMK, RJL, RMC) THREE-JUDGE COURT

Affidavit of Richard Clinton Beeson

I, Richard Clinton Beeson, declare as follows:

1. I am the Political Director of the Republican National Committee ("RNC") and have previously served as a Regional Political Director and Regional Finance Director for the RNC.

2. I have personal knowledge of RNC and its activities, and if called upon to testify I would competently testify as to the matters stated herein.

New Jersey Account

3. The RNC intends to (a) create a **New Jersey Account** for state funds (non-federal funds subject to state regulation) subject to New Jersey state law, (b) solicit state funds into the account under New Jersey state law, and (c) use those funds to support state Republican candidates in the November 2009 election. Because New Jersey holds its state elections in odd numbered years, there will be no federal candidates on the 2009 ballot.

4. We plan to use funds from the New Jersey Account to make direct contributions to New

Jersey state and local candidates according to state law limits. At this time, we do not know the specific candidates that we will support, as our party rules preclude us from supporting pre-primary candidates unless (1) the candidate is unopposed or (2) we receive prior written and filed approval of all RNC members from the state in question. We also plan to use these funds to make independent expenditures advocating the election of the New Jersey Republican gubernatorial nominee, specific advertising and direct mail for the entire Republican ballot in New Jersey, and get-out-the-vote ("GOTV") calls. None of these activities would clearly identify any federal candidate.

Virginia Account

5. The RNC intends to (a) create a **Virginia Account** for state funds subject to Virginia state law, (b) solicit state funds into the account under Virginia state law, and (c) use those funds to support Republican candidates for the November 2009 election. Like New Jersey, Virginia also holds its elections for state office in odd numbered years. Therefore, there are no federal candidates on the 2009 Virginia ballot.

6. We plan to use funds from the Virginia Account to make direct contributions to legislative races. Such contributions are especially important to maintain the Republican majority in the state assembly before redistricting. We plan to directly coordinate campaign activities with the Republican gubernatorial nominee. We will also place GOTV calls. None of these activities would clearly identify any federal candidate

7. Virginia is especially important to our political strategy for several reasons: (1) Virginia has traditionally been a stronghold for Republicans, and we are looking forward to recapturing this "red state"; (2) maintaining a Republican majority in the state assembly is crucial to influencing the state's redistricting; (3) the current Democrat frontrunner for governor, Terry McAuliffe, a former

Democratic National Committee ("DNC") chairman, has extremely high name recognition; (4) the appointment of Governor Tim Kaine as DNC chairman puts a national focus on the Virginia gubernatorial race.

Redistricting Account

8. The RNC intends to (a) create a **Redistricting Account**, for non-federal funds and state funds subject to state law, (b) solicit funds into the account under applicable state laws, and (c) use those state funds to support the redistricting efforts of various states' Republican parties after the 2010 census.

9. The Redistricting Account would provide resources for political activity related to winning state legislative races; technology and staffing to support the data compilation, analysis, and map drawing related to redistricting; and litigation efforts and other legal fees related to redistricting. The political components would involve two primary objectives: (1) the hiring of political and communications staffers to develop and execute a political strategy related to redistricting; and (2) the use of the RNC's State Elections Accounts to advance redistricting goals by supporting state legislative candidates nationwide. The Redistricting Account would support data analysis and map drawing primarily in the following ways: (1) the hiring of data management and census data experts; and (2) the purchasing of hardware and software to support the RNC's redistricting efforts. The Redistricting Account would also support the legal component of the RNC's redistricting efforts through hiring additional in-house legal staff with expertise in redistricting and enabling the RNC to hire outside counsel to assist in redistricting related litigation.

Grassroots Lobbying Account

10. The RNC intends to (a) create a **Grassroots Lobbying Account**, for non-federal funds, (b)

solicit non-federal funds into the account, and (c) use those funds to support grassroots lobbying efforts for federal legislation and issues important to the Republican Party's platform.

11. The RNC intends to use the Grassroots Lobbying Account to pay for radio, television, and internet grassroots lobbying advertisements on relevant public-policy issues. The first two issues the RNC would like to address are issues being debated by the 111th Congress: (1) "card check" legislation, which would allow unionization without secret-ballot elections for workers; and (2) legislation to revive the "Fairness Doctrine," which would require radio station owners to provide equal time on matters of public importance or risk losing their broadcast licenses. The following are true and correct copies of ads that the RNC intends to broadcast:

Card Check
Secret Ballot
[Text of radio ad]

Today, when workers vote on whether to join a union, they use a secret ballot. Just like we use for any public election.

But, some in Congress and their labor union allies want to change that.

The "Employee Free Choice Act" is about anything but free choice. The legislation would establish a card check scheme that would strip employees of the right to vote in private when deciding whether to join a union.

Under the card check scheme, secret ballot voting is eliminated. Every worker's vote is public. There is no protection against intimidation or coercion, and no guarantee that workers would be able to vote their true wishes.

We elect our members of Congress by secret ballot. Why should millions of Americans be stripped of that right?

Call [insert Representative/Senator name] and tell him [her] to stand up to the union special interests. Tell him [her] to oppose card check legislation.

Secret Ballot
[Concept for television/internet ad]

Viewers see a parent with a child while the parent votes in an election. The parent is teaching the child about the role of the secret ballot in democracy only to have "union goons" grab the parent away from the child and force the parent to vote on whether to form a union in a huge public arena (possibly a game show). The child cries out, "Daddy/Mommy, what happened to democracy?" and the evil game show host says, "Not when it comes to unions, kid."

Fairness Doctrine
Freedom of Speech
[Text of radio ad]

Freedom of speech. One of our most fundamental rights.

So, why is it that some in Congress want to censor speech on the airwaves?

Do they not trust Americans to think for themselves?

Are they that frightened of their critics?

The Fairness Doctrine was killed off more than 20 years ago, because it was anything but fair. Yet, some in Congress are pushing legislation to bring the doctrine back and require broadcasters to present opposing viewpoints on controversial issues of public importance.

Let's face the facts.

The Fairness Doctrine is nothing more than a clear attack on free speech.

It would give total control of the public airwaves to the government, and allow the government to dictate the kind of news and opinions that broadcasters choose to air.

The freedom of speech is central to our democracy. We must protect it.

Call [insert Representative/Senator name] and tell him [her] to tell him [her] to oppose any efforts to bring back the Fairness Doctrine.

State Elections Accounts

12. The RNC intends to (a) create several **State Elections Accounts,** for state funds, (b) solicit state funds into the accounts, and (c) use those funds exclusively to support state candidates in various states. The funds would be solicited and spent in accordance with any applicable state law. The RNC intends to support state candidates from this Account in elections where only state candidates appear on the ballot and in elections where both federal and state candidates appear on the ballot.

13. The RNC plans to use funds from the State Elections Accounts to make direct contributions to state and local candidates. Several states permit unlimited contributions to candidates and/or corporate contributions to candidates. We are merely looking to compete on an equal playing field in these states. We will also use these funds for independent expenditures for Republican state and local candidates, specific advertising and direct mail for the entire Republican ballot, and GOTV calls.

14. All of these activities will be aimed at state candidates and state elections. None of the activities will in any way identify, reference, or otherwise depict any federal candidate.

Litigation Account

15. The RNC intends to solicit non-federal funds into a **Litigation Account**. The RNC plans to use funds from the Litigation Account for costs associated with litigation challenging BCRA and other miscellaneous litigation not related to federal elections.

Building Account

16. The RNC intends to solicit non-federal funds into a **Building Account** exclusively for maintenance and upkeep of the RNC's headquarters.

17. Before BCRA, non-federal funds were critical to sustaining the RNC's Building Fund. Since then, we have had to divert federal funds to such uses as replacing the building's generator and fixing aging elevators. Every dollar of federal funds used for those items takes away from our ability to reach out directly to voters and engage new voters in the political process.

18. The RNC is ready and able to do all these activities but cannot because it is permitted to solicit and use only federal funds. So, unless the RNC obtains judicial relief, it will not create any of the above accounts for non-federal and state funds. In addition to the activities listed above, the RNC would like to participate in materially similar activities in the future.

19. The RNC will not aid contributors to any of the accounts in obtaining preferential access to federal candidates or officeholders. For example, the RNC will not, in any manner different than or beyond that currently afforded to contributors of federal funds, (1) encourage officeholders or candidates to meet with or have other contact with contributors to these accounts, (2) arrange for contributors to participate in conference calls with federal candidates or officeholders, or (3) offer access to federal officeholders or candidates in exchange for contributions. Furthermore, the RNC will not use any federal candidates or officeholders to solicit funds for any of the Accounts.

20. Subsequent to 2003, the Republican Party, as an institution, has changed due to leadership and staff turnover. Political majorities across the country have also shifted, making certain races more important than others at any given time. For example, Virginia, once a Republican stronghold, went for a Democrat candidate in 2008.

21. As a party, the RNC has lived under BCRA for three cycles. The potential problems that the RNC identified its briefs to the *McConnell* Court are even more acute than anticipated. For example,

the rise of 527s (and the resulting failure of the FEC to regulate) has left the RNC at a fundraising disadvantage for a host of its activities. Similarly, the RNC has been negatively affected by the explosion of internet fundraising, barriers to collaborative relationships between national party and state parties, and inequality of restrictions on a party's ability to raise and spend funds.

I verify under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct.

Executed on this 26 day of January, 2009.

/s/ Richard C. Beeson
Richard Clinton Beeson

Exhibit 2

United States District Court
District of Columbia

Republican National Committee et al., ***Plaintiffs,*** ***v.*** **Federal Election Commission**, ***Defendant.***	**Case No.** 08-1953 (BMK, RJL, RMC) THREE-JUDGE COURT

Affidavit of Robert M. "Mike" Duncan

I, Robert M. "Mike" Duncan, declare as follows:

1. I am the Chairman of the Republican National Committee ("RNC").

2. I have personal knowledge of the RNC and its activities, and if called upon to testify I would competently testify as to the matters stated herein.

3. I intend to **(1)** solicit contributions of state funds and non-federal funds to RNC's New Jersey Account, Virginia Account, Redistricting Account, Grassroots Lobbying Account, State Elections Accounts, Building Account, and Litigation Account, **(2)** solicit contributions of state funds to the California Republican Party, and **(3)** solicit contributions of state funds to the campaigns of Republican candidates for state office appearing on the November 2009 ballot in New Jersey and Virginia.

4. I intend to make the described solicitations in my official capacity as RNC Chairman on behalf of the RNC, *i.e.*, as an "officer or agent acting on behalf of such a national committee." 2 U.S.C. § 441i(a)(2).

5. I intend to (a) attend and be a featured guest at state candidate campaign

events/fundraisers and solicit contributions for specific state candidates at such events, (b) sign and send letters and emails soliciting such contributions from RNC donors and other potential donors, and (c) make telephone calls to orally solicit such contributions from RNC donors and other potential donors.

6. I will not provide any donor who gives funds in response to the above solicitations with any preferential access to any federal candidate or officeholder.

7. I am ready and able to do this activity, and would do this activity but for the fact that the 2 U.S.C. § 441i(a) makes it a crime. Unless I am able to obtain judicial relief, I will not do this activity. I intend to solicit state funds and non-federal funds in materially similar situations in the future, if permitted.

I verify under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct.

Executed on this 26th day of January, 2009.

/s/ Mike Duncan
Robert M. "Mike" Duncan, Chairman

Exhibit 3

United States District Court
District of Columbia

Republican National Committee et al., ***Plaintiffs,*** ***v.*** **Federal Election Commission**, ***Defendant.***	**Case No.** 08-1953 (BMK, RJL, RMC) THREE-JUDGE COURT

DECLARATION OF BILL CHRISTIANSEN

I, Bill Christiansen, declare under penalty of perjury that the following is true and correct and of my personal knowledge, and if called upon to testify, I could truthfully testify to the same:

1. From 200 to 2006, I served as the Executive Director of the Arizona Republican Party and the Orange County Republican Party. In 2006, I served as the Director of the California Republican Party's (CRP) Victory 2006 program. From 2007 to the present, I serve as the Chief Operating Officer of the CRP. In that capacity, I planned or coordinated and executed its campaign activities, including fundraising, campaign plans, candidate support programs, and voter contact activities. I executed the CRP's member communications programs and federal election activities, to the very limited extent of them. In all these capacities, I was and am familiar with the requirements and limitations imposed on CRP and political parties generally not only by the Federal Election Campaign Act (FECA) and also the BCRA amendments to FECA, but also by the California Political Reform Act (CPRA). I am also familiar with some of the local ordinances in California jurisdictions in which CRP has to operate, especially the Orange County Campaign Finance laws.

2. The following data is derived from the campaign reports filed by the CRP during the period from 2003-2008, during the time that BCRA became effective and has remained in effect.

3. CRP supports Republican nominees for partisan elective offices in general elections, particularly in contested races. CRP is prohibited from and does not support candidates for partisan elective office at primary elections. Thus, CRP's potential federal candidate support activity does not take place in any regular primary election. CRP also supports candidates for non-partisan offices at the state and local levels. The statewide offices of Insurance Commissioner and Superintendent of Public Instruction are not partisan offices. Local offices are all non-partisan (Art. II, sec. 6(a), Cal. Const.)

4. California holds its Direct Primary on the first Tuesday after the first Monday in June and its statewide general election on the first Tuesday after the first Monday in November. California holds a stand alone Presidential Primary election on the first Tuesday in February in even numbered years divisible by four. CEC § 1202. California law permits local jurisdictions to set their election dates and consolidate those elections with the Direct Primary and the statewide general election, so that state and local officer elections may be held on those dates which are regular federal election dates. Thus, candidates for state and local elective offices appear on the ballot with candidates for federal offices.

5. For state offices, under the CPRA, political parties are permitted and encouraged by state policy to support candidates for state elective offices with unlimited contributions, "coordinated expenditures" and "member communications" on their behalf. (CGC §§ 85400(c), 85312.) Political parties are permitted to make unlimited contributions to local candidates where local law does not impose limitations, and unlimited "member communications" on behalf of such candidates, coordinated with the local candidates, irrespective of any local limitations on contributions or independent expenditures. (CGC §§ 85312, 85703.)

6. Since the enactment in 2000 of Proposition 34, CRP has engaged in substantial support of candidates for partisan offices at the state level, and more recently in the 2006 and 2008 elections, CRP has engaged in local candidate support. This activity has included contributions, coordinated expenditures and member communication expenditures in support of candidates for state offices at elections held in 2002, 2003, 2004, 2006 and 2008, and member communication expenditures in support of candidates for local offices, most of the latter in 2006 and 2008.

7. CRP has spent little money supporting federal candidates, either before or after BCRA was adopted, because California has had very few competitive Congressional districts since 2001. As noted above, CRP does not support any federal candidates in primary elections.

8. Because California's U.S. Senate seats have been held by Democrat incumbents since 1994, CRP has spent little funds on campaign activities in support of Republican nominees for those offices. CRP has not made any significant coordinated expenditures in a U.S. Senate race since 1998.

9. Because California's Congressional seats were redistricted in 2001 to virtually eliminate partisan competition at general elections, CRP has not engaged in any substantial contribution or "coordinated expenditures" under 2 U.S.C. § 441a(d) for 2002, 2004, 2006 and 2008. In 2002, CRP contributed $10,000 to California Congressional candidates, of which neither were in highly contested races. CRP made "coordinated expenditures" totaling $86,275 to 3 candidates, one in a contested general election race (CD 22). In 2004, the same was largely true: CRP made one $5,000 contribution in a contested California congressional race, and $72,650 in coordinated expenditures in support of David Dreier (CD 26) – a race that was not seriously contested. In 2005-2006,

CRP made coordinated expenditures of $11,013 in one special Congressional race (Campbell – CD 48) and in 2006, CRP paid filing fees for 17 Congressional candidates in non-contested races totaling $$27,557, and one coordinated expenditure on behalf of David Dreier (CD 26) totaling $$41,775. In 2007-2008, despite spending $17,268,249 in federal funds, CRP made no contributions or independent expenditures, and only $41,660 in coordinated expenditures (Rohrabacher – CD 46) on behalf of federal candidates. Thus, between 2002 and 2008, CRP engaged in coordinated expenditure activity in fewer than 4 contested general election races out of 216 Congressional seats up for election in those years. After enactment of BCRA's FEA PASO provisions in 2002, CRP eschewed including federal candidates on its slate mailings. CRP also eschewed identifying federal candidates entirely in absentee ballot application and chase mailings, and similar voter communications for the 2002, 2004, 2006, and 2008 elections.

10. By contrast, in 2002, CRP actively supported 16 candidates for state elective offices with endorsement communications (mailings, party slate cards, broadcast and cablecast communications) for $6,467,968. In 2003-2004, CRP actively supported 46 candidates for state elective offices with endorsement mailings, broadcast and cablecast communications and non-advocacy issue oriented mailings for $5,680,352. In 2005-2006, CRP actively supported 36 candidates for state elective offices with endorsement mailings, member communication mailings, broadcast communications and non-advocacy issue-oriented mailings, for $8,787,102. CRP also supported several dozen candidates for local offices with member communication mailings. In 2007-2008, CRP actively supported 11 candidates for state elective offices with endorsement mailings, member communication mailings, broadcast communications and non-advocacy issue-oriented mailings, totaling $5,710,795. CRP also supported nearly 100 candidates for local offices with member communication mailings. The 4 election total of these expenditures for state and local candidate support is $26,646,217.

11. During the 2003-2008 period, CRP spent barely more than 1% of the total of $26,942,147 it spent on all candidates for federal candidate support.

12. CRP has eschewed including any communications that clearly identify federal candidates and contain words that promote, support or oppose such federal candidates in its state and local candidate support communications, or in its state and local ballot measure endorsement communications because of BCRA's requirement that such communications would have to be paid entirely with federal funds under 2 U.S.C. § 441i(b)(2)(B) and 2 U.S.C. § 431(20). Using only federal funds for such communications would virtually eliminate CRP's ability to engage in such state and local candidate and ballot measure activity because of the severe, adverse impact on these fundamental state and local campaign programs.

13. CRP spent $7,768,683 on voter registration activities from 2003 to 2008, as reflected on its FEC reports. Of this, a substantial portion, in excess of the federally-required minimum percentage, was paid with hard federal dollars.

14. CRP spent $619,372 on voter identification and GOTV activities from 2003 to 2008, as reflected on its FEC reports. All or virtually all of these payments were made with federal funds or federal Levin funds.

15. Between 2003 and 2008, CRP spent $51,673,117 from its federal account, according to FEC reports. During this same time it spent $ 94,395,279 from its non-federal account, of which $18,595,745 was for transfers to the federal account for allocable activity expenses.

16. CRP intends to use state funds to participate in GOTV, voter identification and voter registration activities, as defined in 2 U.S.C. § 431(20), in future elections for state and local candidates. None of this "Federal election activity" would be targeted to any federal candidate, *i.e*. it would not reference, describe, or otherwise depict any federal candidate. This activity is prohibited by 2 U.S.C. § 441i(b). Absent the requested judicial relief CRP will not engage in these activities.

17. CRP has spent $18,130,187 in support of or opposition to statewide ballot measures since 2002.

18. CRP believes that the endorsement and opposition of ballot measures are enhanced by the ability freely to associate Democrat federal officeholders with ballot measures that CRP opposes, and to associate Republican officeholders with CRP endorsed ballot measures.

19. The attached January 15, 2009, Memorandum contains true and accurate information regarding CRP's past and future ballot measure activity. CRP intends to use state funds to distribute the Letter attached to the Memorandum. The Letter will qualify as a public communication, 2 U.S.C. § 431(22) ("public communication" definition). Although "attack" and "oppose" are undefined in the definition of "federal election activity," 2 U.S.C. § 431(20)(A)(iii),CRP believes that its public communications will "attack" or "oppose" Nancy Pelosi and Barbara Boxer, as these terms are used in the definition of "federal election activity," and so it is prohibited from using state funds for its communication. 2 U.S.C. § 441i(b)(1). Absent the requested judicial relief, CRP will not undertake this activity. CRP intends to use state funds in materially similar situations in the future, if permitted.

I verify under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct.

Executed on this 22 day of January, 2009.

/s/ Bill Christiansen
BILL CHRISTIANSEN

M E M O R A N D U M

January 15, 2009

TO: California Republican Party
Board of Directors

FROM: Ron Nehring, Chairman

RE: Ballot Measure Campaign

At our September 7, 2007 CRP Convention Meeting in Indian Wells, CRP endorsed or opposed a number of ballot measures for the 2008 statewide ballots (February 5, 2008; June 3, 2008; November 4, 2008). In September 2008, we endorsed or opposed several measures that have already qualified to appear on the June 3, 2010 statewide election ballot; and we are likely to endorse and oppose some of the measures discussed below at our February 20-22, 2009 Convention Meeting in Sacramento.

As you know, in past elections we have actively campaigned in support and opposition of various ballot measures appearing on statewide ballots. For instance, in connection with the November 7, 2006 statewide general election, we endorsed Propositions 1A, 1B, 1E, 83, 85, and 90. At the February 5, 2008 election, we opposed the Proposition 93 term limits weakening measure and supported Propositions 94, 95, 96 and 97. At the June 5, 2008 election, we supported Proposition 98, a true eminent domain reform measure, and opposed phony Proposition 99, and at the November 5, 2008 general election, we supported and opposed the following measures: Proposition 4: Parental notification, "Sarah's law"; Proposition 8: Protect Marriage; Proposition 9: Protect Crime Victims' Rights.; and Proposition 12, Veterans' Bond; We opposed Proposition 1A: High Speed Rail Bond; Proposition 2: Farm Animals. ("Condos for Chickens"); Proposition 3: Expensive hospital bond; Proposition 5: Weaken penalties for drug crimes; Proposition 6: Anti-gang measure authored by Sen. George Runner (R); Proposition 7: Expensive, unproven energy scheme; Proposition 10: Expensive alternative energy bond. After endorsing these measures, the Party spent a considerable amount of effort and expense communicating with its members, local party committees, and the general public encouraging them to vote in favor of these propositions. Similarly, the CRP also spent a significant sum of money opposing the passage of Propositions 1C, 84, 86, 87, 88, and 89 in the same election. For the most part, our effort resulted positively on election night. Similarly, in the 2005 Statewide Special Election, the Party spent millions of dollars supporting Governor Schwarzenegger's ballot measure proposals. While these proposals eventually did not succeed at the ballot box, our effort did result in greater support for the initiatives.

In 2002, CRP spent $47,517 on state ballot measure activity (support of Proposition 49 [afterschool programs] or opposition to Proposition 52 [same day voter registration]); in 2003 and 2004, CRP spent $2,672,101 on state ballot measure activity, supporting Proposition 1A (Indian gaming), 59 (open meetings) and opposing Propositions 62 (open primaries), 66 (reduction of criminal sentences) and 63 (wealth tax for mental health spending programs); in 2005, CRP spent $4,592,486 on state and local county ballot measure activity(supporting state Propositions 73, 74, 75, 76, 77, 78, and 79 and opposing Proposition 80 and Orange County Measures D, B and O); in 2006, CRP spent $4,970,775 on such

activity (concerning Propositions 1A, 1B, 1E, 83, 85, 86, 87, 88, 89 and 90) ; in 2007-2008, CRP spent $5,847,310 on such activity outlined above. The following is information on upcoming ballot measures of interest to CRP:

A. Current measures placed on the June 2010 statewide ballot by initiative and Legislative action: SCA 4 – seismic retrofitting exemption from Prop 13 valuation; SCA 12 – California Constitutional amendment affecting use of State Lottery Proceeds; SCA-13 – California Constitutional amendment providing for Budget Stabilization Fund and formula for cap on funding of this "rainy day" fund; AB 583 – statutory amendment imposes fee (tax) on registered state lobbyists and lobbyist-employers to fund public financing of election for Secretary of State; AB 1654 – allowing legislature to enact statutory law to modernize the State Lottery without a 2/3ds vote of the people; AB 1741 – would allow the State to sell the State Lottery assets to a private, not-for-profit corporation with proceeds to be used for state general fund purposes.

B. Measures discussed for possible special election in November 2009:

1. As a result of California's fiscal crisis (with the Governor projecting a $42 billion in budget deficits for the current and next state fiscal years), Capitol sources and media report the likelihood that several competing measures to deal with the fiscal crisis may appear on a special 2009 election ballot. (See, e.g., SF Chronicle 1/20/09 As an update on ballot measures on the near horizon, the Legislative Analyst recommended the Governor and the legislature put a bevy of measures on a special election ballot for April 2009 so that if approved by CA voters, the revenue "**enhancements**" could be included in the 2010-2011 state budget's revenue projections. These included: (a) a temporary sales tax adjustment; (b) approval of the diversion of revenues from special funds collected under existing tax schemes (Propositions 10 (First Five tobacco tax), 49 (afterschool programs), 63 (wealth tax for mental health programs) and 99 (tobacco tax). In addition, the California Teachers Association recently submitted two measures for title and summary: (1) adding a temporary sales tax of 1.5 % that would be earmarked for K-12 education and community colleges; and (2) reducing the vote requirement necessary for the legislature to enact tax increases from 2/3ds to 55%.

2. The Legislature and the Governor are likely to call a special election to place Legislatively-approved measures for voter approval, including some of the measures identified in A above. Measures under discussion include (1) a state spending limit measure – Constitutional Amendment required; (2) a state budget enactment revisions – Constitutional Amendment required; (3) a Washington State – style "Top Two" Primary System, combined with elimination of partisan voter registration – for which a Constitutional Amendment required to amend current California Constitution, Article II, section 4(b) that provides a constitutional right for parties that nominate candidates for partisan offices to have their nominees placed on the general election ballot; (4) a Parental Notification of Abortion measure identical to November 5, 2008 Proposition 4 – for which a Constitutional Amendment required; (5) a Repeal of Proposition 8 ban on same-sex marriage; (6) a reduction of voting percentage required to enact State tax increases – which would require a Constitutional Amendment of Proposition 13.

Furthermore, there is discussion in the conservative community about further reforms, including (1) a California version of Colorado Proposition 54 which prohibited "play-to-pay" activities by corporations and labor unions that seek or hold public contracts; and (2) an initiative to place Congressional redistricting in the hands of the non-partisan Redistricting Commission adopted at the November 5, 2008 election as Proposition 11.

We would like to aid the qualification and subsequent campaign in support of a ballot measure changing the way Congressional redistricting is done in California. Attached to this Memorandum is a letter to be sent to registered Republican voters and like-minded voters in support of this effort. The letter will also include a fundraising appeal to support the party by contributing state-permissible campaign contributions. This letter would be directed to members of the Party and to selected "decline-to-state"/independent voters alike. These are the two groups we have identified as most likely to ideologically support a ballot measure on this topic.

The letter attacks Speaker Nancy Pelosi, who funded opposition to Proposition 77 in 2005 and who stands in the way of Congressional redistricting reforms, as noted in a number of op-eds and political columns. Pelosi's negatives among Republican voters remain very high, and Congress' approval ratings in public polls are at all–time lows (somewhere in the 20s). Similarly, the Letter mentions Sen. Boxer for the same reasons. Sen. Boxer publicly opposed Proposition 77 in 2005 and also Proposition 11 in 2008.

Please contact me if you have any questions or suggestions about these proposed letters or the strategy to support the qualification of a ballot measure on this important issue.

Dear *****:

Nancy Pelosi and Barbara Boxer don't want you to read this letter. They want to keep California voters from effectively choosing their Congressional representatives.

The Democrats seek to preserve their stranglehold on California's government and perpetuate the gerrymandered Congressional districts that allow fifty thousand voters to elect a Democrat to Congress from District 43 while over one hundred and twenty thousand voters are required to elect a Republican to Congress in each of Districts 2, 3, 4, 22, 24, 46, and 48 – ample proof of the maxim that under our current, scandalous redistricting system in California "the voters don't choose their representatives, the representatives choose their voters."

The California Constitution allows State Legislators to draw the political boundaries in the state. This means Legislators get to draw the boundaries for the Assembly, State Senate, and Congressional districts. In essence, this allows the Legislators to determine what voters they want to represent in order to guarantee themselves, and their political party, re-election.

Political boundaries are re-drawn every ten years. In 2001, the State Legislators used new, hi-tech computers to draw up the political boundaries and guarantee themselves and their party re-election year after year. These computers did such a good job that a seat has switched hands from one political party to another only 3 times in the last six years, despite the fact that the People of California have a less favorable opinion of the State Legislature and Congress than at any other point in modern history.

When politicians are guaranteed re-election, they stop listening to the People and act out of their own self-interest. A lack of competitive elections has led to do-nothing legislative grid-lock and Legislators overspending our tax dollars in order to pay back their political contributors.

We need to make a change, but Nancy Pelosi and Barbara Boxer will do everything they can to stop a change from happening. Help us take a stand for fairness and accountability in California elections. Support us in our effort to qualify a ballot measure that will give the power of drawing political boundary lines to the People and make elections competitive again. Help bring democracy back to California.

You can help the California Republican Party in this effort by making your contribution to our initiative qualification efforts. Please give $100, $25, or whatever you can to support this effort. With your help, we can begin the process of making California government about the People, not the politicians.

Exhibit 4

United States District Court
District of Columbia

Republican National Committee et al., ***Plaintiffs,*** ***v.*** **Federal Election Commission**, ***Defendant.***	**Case No.** 08-1953 (BMK, RJL, RMC) THREE-JUDGE COURT

DECLARATION OF JONATHAN BUETTNER

I, Jonathan Buettner, declare that the following is true and correct and of my personal knowledge, and if called upon to testify as a witness, I could truthfully and competently testify to the same:

1. From 2003 to 2008, I served as the Executive Director of the San Diego Republican Party (SDRP). In that capacity, I planned and executed its campaign activities, including fundraising, campaign plans, candidate support programs, and voter contact activities. I executed the SDRP's member communications programs and federal election activities, to the very limited extent of them. In that capacity, I was and am familiar with the requirements and limitations imposed on SDRP and political parties generally not only by the Federal Election Campaign Act (FECA) and the BCRA amendments to FECA, but also by the California Political Reform Act (CPRA) and the City of San Diego Campaign Reform Ordinance.

2. The following data is derived from the campaign reports filed by the SDRP during the period from 2003-2008, during the time after BCRA became effective and has remained in effect.

3. SDRP supports Republican nominees for partisan elective offices nominated at the Direct Primary. (California Elections Code § 316.) However, SDRP does not support candidates for partisan elective offices, including federal Congressional and U.S. Senate offices, in contested partisan primary elections.

4. Local offices are all non-partisan (Art. II, sec. 6(a), Cal. Const.), and SDRP actively supports candidates for local offices, including candidates for city councils, member of the county board of supervisors, and local school districts, water boards and the like.

5. California law permits local jurisdictions to set their election dates and consolidate those elections with the Direct Primary and the statewide general election, so that state and local officer elections may be held on those dates which are regular federal election dates. Candidates for state and local elective offices appear on the ballot with candidates for federal offices.

6. For state offices, under the CPRA, political parties are permitted indeed encouraged by state policy to support candidates for state elective offices with unlimited contributions, "coordinated expenditures" and "member communications" on their behalf. (CGC §§ 85400(c), 85312.) Political parties are permitted to make unlimited contributions to local candidates where local law does not impose limitations, and unlimited "member communications" on behalf of such candidates, coordinated with the local candidates, irrespective of any local limitations on contributions or independent expenditures. (CGC §§ 85312, 85703.) SDRP has an active program to endorse and support local candidates using member communications and where available, direct contributions.

7. For local offices, some jurisdictions, like the City of San Diego which is the principal municipality in the county SDRP represents, have their own local campaign law regulations. San Diego, for example, prohibits business entities including corporations from making any contributions to city candidates or to committees that support city candidates, whether those committees make direct contributions or "independent expenditures" on behalf of the candidates. San Diego Municipal Code § 27.2947.

8. Since the enactment in 2000 of Proposition 34, SDRP has engaged in substantial support of candidates for partisan offices at the state level, SDRP has engaged in substantial activity in support of local non-partisan candidates. This activity has included, a smaller amount of contributions, coordinated expenditures and member communication expenditures in support of candidates for state offices, either statewide candidates on the ballot in 2003, 2004, 2006 and 2008 or state candidates whose jurisdictions include San Diego County, and at the local level, member communication expenditures for candidates for local offices in all local elections since 2001.

9. Because California's U.S. Senate seats have been held by Democrat incumbents since 1994, SDRP has not spent any funds on campaign activities in support of Republican nominees for those offices.

10. Because California's Congressional seats were redistricted in 2001 to virtually eliminate partisan competition at general elections, SDRP has not engaged in any substantial contribution or "coordinated expenditures" under 2 USCA §441a(d) for 2002, 2004, 2006 and 2008.

11. SDRP inaugurated a local candidate support program in 2002 and has endorsed hundreds of candidates for local offices on endorsement mailings or party slate cards during the elections from 2002-2008. For example, at the November 4, 2008 general election, SDRP endorsed over one hundred candidates for local offices on its endorsement slate mailings. However, as noted in paragraphs 7 and 8 above, none of these endorsement mailings included any federal candidates because of the restrictions of BCRA, 2 U.S.C. §441i(b)(2)(B) and 2 U.S.C. § 434(20).

12. SDRP spent $861,269 on state and local candidate support activities in 2006 of its total of $1,408,617 in expenditures that year. This constituted 61% of its total expenditures that

election year. That election cycle did not include a San Diego City mayoral or city attorney race, as did 2004 and 2008. In 2004, it spent $$1,257,842 of its total of $1,816,055 in expenditures that election year. This constituted 69% of its total expenditures that year. In 2008, SDRP spent $1,927,970 of its $2,717,753 total expenditures on expenditures related to state and local candidate support, while it spent only $2,384 in federal candidate support activity. None of the state and local candidate support activity, unambiguously relates to any federal election or candidate. The very limited amount of SDRP's federal candidate support included independent expenditures on behalf of 5 county-jurisdiction congressional candidates (of whom 2 were in safe seats, 1 in an open but safe seat and 2 in safe Democrat-incumbent seats) and $550 in contributions to McCain for President. Spending on federal candidates in the 2008 Presidential election amounted to 9/100ths of 1% of the total 2008 expenditures, and 1/10th of 1% of combined federal and state or non-federal expenditures.

13. Because SDRP is required to spend significant federal funds and Levin funds for "Federal election activity," *see* 2 U.S.C. 441i(b), which dollars are also prized for local uses because the City of San Diego prohibits the use of corporate and all business entity dollars for contribution and independent expenditure activities within its jurisdiction (SDMC 27.2947), SDRP has been precluded from engaging in more local candidate support activity than it has done in the period 2003-2008.

14. SDRP occasionally during this period has endorsed, supported and opposed state and local ballot measures on its member communication mailings that have featured state and local, but not federal candidates, as described more fully above. On occasion, SDRP has considered whether or not to include in such endorsement communications statements that support or attack a federal candidate in order to persuade voters of San Diego County to vote for or against the SDRP position on such ballot measures. However, SDRP has declined to include such language in its endorsement communications in large part due to the requirement of BCRA that such communications, even related to state or local ballot measures, would have to be paid wholly with hard federal dollars.

I verify under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct.

Executed on this 23 day of January, 2009.

/s/ Jonathan Buettner
JONATHAN BUETTNER

Exhibit 5

United States District Court
District of Columbia

Republican National Committee et al., ***Plaintiffs,*** ***v.*** **Federal Election Commission**, ***Defendant.***	**Case No.** 08-1953 (BMK, RJL, RMC) THREE-JUDGE COURT

DECLARATION OF BARRETT TETLOW

I, Barrett Tetlow, declare that the following is true and correct and of my personal knowledge, and if called upon to testify as a witness, I could truthfully and competently testify to the same:

1. I am the current Executive Director of the San Diego Republican Party (SDRP). In that capacity, I am responsible to plan and execute its campaign activities, including fundraising, campaign plans, candidate support programs, and voter contact activities. I was prior to this employment employed as chief of staff to California State Assemblyman Martin Garrick. In that capacity, I drafted and shepherded to passage clarification of the California Political Reform Act (CPRA) law permitting political party committees to engage in member communications programs to support state and local candidates. I served most immediately before my current position as a campaign consultant, and in both capacities, I was and am familiar with the requirements and limitations imposed on SDRP and political parties generally not only by the Federal Election Campaign Act (FECA) and also the BCRA amendments to FECA, but also by the California Political Reform Act (CPRA) and the City of San Diego Campaign Reform Ordinance.

2. I understand that prior to my tenure, the SDRP occasionally had endorsed, supported and opposed state and local ballot measures on its member communication mailings that have featured state and local, but not federal candidates. On occasion, SDRP had considered whether or not to include in such endorsement communications statements that support or attack a federal candidate or officeholder, in order to persuade voters of San Diego County to vote for or against the SDRP position on such ballot measures. However, SDRP had declined to include such language in its endorsement communications in large part due to the requirement of BCRA that such communications, even related to state or local ballot measures, would have to be paid wholly with hard federal dollars.

3. SDRP would like to support and oppose state and local ballot measures in the future. As part of this effort, SDRP intends to use public communications which clearly identify

federal candidates and contain words promoting or opposing such candidates in the future.

4. SDRP believes that the endorsement and opposition of ballot measures are enhanced by the ability freely to associate Democrat federal officeholders with ballot measures that CRP opposes, and to associate Republican officeholders with SDRP endorsed ballot measures.

5. SDRP intends to use state funds to participate in GOTV, voter identification, and voter registration activities, as defined in 2 U.S.C. § 431(20), in future elections for state and local candidates. None of this "Federal election activity" would be targeted to any federal candidate, *i.e.* it would not reference, describe, or otherwise depict any federal candidate. This activity is prohibited by 2 U.S.C. § 441i(b). Absent the requested judicial relief SDRP will not engage in these activities. SDRP intends to use state funds in materially similar situations in the future, if permitted.

6. SDRP intends to support efforts to change the way Congressional redistricting is done in California. To that end, SDRP intends to use state funds to distribute a Letter, which Letter's text is below. The Letter will qualify as a public communication, 2 U.S.C. § 431(22) ("public communication" definition). Although "attack" and "oppose" are undefined in the definition of "federal election activity," 2 U.S.C. § 431(20)(A)(iii), SDRP believes that its public communication will "attack" or "oppose" Nancy Pelosi and Barbara Boxer, as these terms are used in the definition of "federal election activity," and so it is prohibited from using state funds for its communication. 2 U.S.C. § 441i(b)(1). Absent the requested judicial relief, SDRP will not undertake this activity. SDRP intends to use state funds in materially similar situations in the future, if permitted:

Dear *****:

Nancy Pelosi and Barbara Boxer don't want you to read this letter. They want to keep California voters from effectively choosing their Congressional representatives.

The Democrats seek to preserve their stranglehold on California's government and perpetuate the gerrymandered Congressional districts that allow fifty thousand voters to elect a Democrat to Congress from District 43 while over one hundred and twenty thousand voters are required to elect a Republican to Congress in each of Districts 2, 3, 4, 22, 24, 46, and 48 – ample proof of the maxim that under our current, scandalous redistricting system in California "the voters don't choose their representatives, the representatives choose their voters."

The California Constitution allows State Legislators to draw the political boundaries in the state. This means Legislators get to draw the boundaries for the Assembly, State Senate, and Congressional districts. In essence, this allows the Legislators to determine what voters they want to represent in order to guarantee themselves, and their political party, re-election.

Political boundaries are re-drawn every ten years. In 2001, the State Legislators used new, hi-tech computers to draw up the political boundaries and guarantee themselves and their party re-election year after year. These computers did such a good job that a seat has

switched hands from one political party to another only 3 times in the last six years, despite the fact that the People of California have a less favorable opinion of the State Legislature and Congress than at any other point in modern history.

When politicians are guaranteed re-election, they stop listening to the People and act out of their own self-interest. A lack of competitive elections has led to do-nothing legislative grid-lock and Legislators overspending our tax dollars in order to pay back their political contributors.

We need to make a change, but Nancy Pelosi and Barbara Boxer will do everything they can to stop a change from happening. Help us take a stand for fairness and accountability in California elections. Support us in our effort to qualify a ballot measure that will give the power of drawing political boundary lines to the People and make elections competitive again. Help bring democracy back to California.

You can help the California Republican Party in this effort by making your contribution to our initiative qualification efforts. Please give $100, $25, or whatever you can to support this effort. With your help, we can begin the process of making California government about the People, not the politicians.

I verify under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct.

Executed on this 23 day of January, 2009.

/s/ Barrett Tetlow
BARRETT TETLOW

United States District Court
District of Columbia

Republican National Committee et al., ***Plaintiffs***, ***v.*** **Federal Election Commission**, ***Defendant.***	**Case No.** 08-1953 (BMK, RJL, RMC) THREE-JUDGE COURT

[Proposed] Order

Plaintiffs' motion for summary judgment on all counts of their complaint is GRANTED for the reasons stated in the motion and memorandum in support.

The Court declares 2 U.S.C. § 441i unconstitutional as applied to Plaintiffs' intended activities. Furthermore, Defendant Federal Election Commission is hereby permanently enjoined from enforcing the challenged provisions as applied to Plaintiffs activities and other materially similar activities that are not unambiguously campaign related.

SO ORDERED this ____ day of _____2009.

_____
United States Circuit Judge

_____
United States District Judge

_____
United States District Judge