which it considered campaign finance reform, Congress expressly considered, and rejected, alternatives to the wholesale ban on receipt or use of soft money by the national parties.

Most significantly, Congress considered and rejected the notion that it could achieve its objectives by limiting soft money donations to the national parties rather than banning them entirely. Congress concluded that capping soft money contributions rather than eliminating them would "send[] the campaign finance laws back in time to the very beginning of the 20th century before the Tillman Act banned direct corporate donations to the parties and before Taft-Hartley banned direct labor contributions to the parties." 147 Cong. Rec. S2887-88 (Mar. 26, 2001) (Sen. Hollings) (opposing the "Hagel Amendment," which would have permitted soft money in limited amounts). The House, like the Senate, rejected proposals that would have capped, rather than banned, soft money contributions.[77] At the same time, however, Congress softened any potential adverse consequences to the parties of the soft money ban by increasing the statutory limits on hard money contributions. See 147 Cong. Rec. S3247 (Apr. 2, 2001) (Sen. Levin); see also Magleby Expert Rep. at 56.

C. Plaintiffs' Challenges to the National Party Soft Money Ban Lack Merit.

1. The national party soft money ban does not violate the First Amendment.

Plaintiffs' contention that BCRA's national party soft money ban violates the parties' rights of free speech and association lacks merit. See RNC Compl. ¶¶ 43-51; McConnell Second Amend. Compl. ¶ 99. The ban simply requires national political parties to fund their activities with hard money. To prevail on their claim, plaintiffs must show that restricting the national parties to hard money will prevent them "from amassing the resources necessary for effective advocacy," Buckley,

[77] See, e.g., 148 Cong. Rec. H273 (Feb. 12, 2002) (Rep. Turner); 148 Cong. Rec. H260 (Feb. 12, 2002) (Rep. Meehan); see also H.R. Rep. No. 107-131, at 48-49 (2001) (Minority Views of Steny H. Hoyer, Chaka Fattah, and Jim Davis to accompany H.R. 2356, Bipartisan Campaign Reform Act of 2001).

424 U.S. at 21, or otherwise "render [them] useless." Colorado II, 533 U.S. at 455; see also Shrink Missouri, 528 U.S. at 396. They have made no such showing.

As Senator Feingold explained, "[s]oft money isn't some magic bullet that the parties need to increase voter turnout or voter participation in the democratic process. Throughout much of the 1970s and 1980s, soft money was mostly absent from party fundraising. The parties raised hard money, and ran their parties on hard money. . . . We didn't need soft money then, and we don't need it now." 147 Cong. Rec. S3106-07 (Mar. 29, 2001) (Sen. Feingold); see also Hickmott Decl. ¶¶ 6-7 (former DSCC official: in 1980s and early 1990s, DSCC functioned effectively without soft money). Moreover, "while the bill eliminates soft money, it also increases the hard money limits to the parties and makes those limits subject to indexing," and permits state and local parties, with restrictions, to use soft money to conduct get-out-the-vote and voter mobilization activities. 147 Cong. Rec. S3247 (Apr. 2, 2001) (Sen. Levin).

The evidence in this case confirms Congress's conclusion that the national party soft money ban will not render the parties at the national and state levels "useless." Colorado II, 533 U.S. at 455; see also Shrink Missouri, 528 U.S. at 396. BCRA substantially increases the caps on contributions of hard money to candidates and parties,[78] providing ample assurance that the national soft money ban will not render the parties unable to function. Even under the existing hard money contribution limits, parties have proven able to raise very large amounts of hard money, even with extremely large sources of soft money at their disposal. D. Green Expert Rep. at 30. As Professor

[78] See 2 U.S.C. 441a(a)(1)(A)-(B) (increasing limit on contributions to candidates and candidates' committees from $1,000 to $2,000 for individuals, and increasing limit on individual contributions to national political party committees from $20,000 to $25,000); 2 U.S.C. 441a(a)(1)(D) (increasing limit on contributions to state political party committees from $5,000 to $10,000); 2 U.S.C. 441a(a)(3) (increasing aggregate limit on individual contributions from $25,000 per year to $95,000 per two-year election cycle, of which $37,500 may be contributed to candidates); 2 U.S.C. 441a(h) (increasing limit on contributions by the Republican or Democratic Senatorial Campaign Committees from $17,500 to $35,000). In addition, many of these contribution limits are to be increased annually to account for inflation as reflected in changes in the consumer price index. 2 U.S.C. 441a(c).

Green explains, the "parties have always managed to find a way to raise larger and larger sums of money under hard money constraints." Id. (noting that while soft money donations rose from $86.1 million to $495.1 million between the 1991-92 election cycle and the 1999-2000 election cycle, hard money contributions also rose markedly, from $445 million in 1991-92 to $741 million in 1999-2000). Under BCRA, "state and national parties will be encouraged to broaden their financial base of hard money contributors," and the "dramatic increase in hard money fundraising over the past decade leaves little doubt that this can be achieved." Donald P. Green, The Impact of the BCRA on Political Parties: A Reply to La Raja, Lott, Keller, and Milkis (Oct. 7, 2002) at 5 [DEV 5-Tab 1, hereinafter D. Green Rebuttal Expert Rep.]; see also McCain Decl. ¶ 20; Buckley, 424 U.S. at 21-22 ("The overall effect of the Act's contribution ceilings is merely to require candidates and political committees to raise funds from a greater number of persons.").

Plaintiffs also contend that the national party soft money ban violates their freedom of association because it prevents them from pooling their resources and conferring about the ways in which state and local parties should spend soft money. See McConnell Second Amend. Compl. ¶ 100. Those contentions lack merit. It is unclear whether organizations even have a First Amendment right to associate with other organizations. See DKT Mem. Fund Ltd. v. Agency for Int'l Dev., 887 F.2d 275, 294 (D.C. Cir. 1989) ("Neither this Court nor the Supreme Court has held that the Constitution protects rights of association between two organizations."). Even assuming that such a right exists, BCRA does not infringe it. The national parties remain free to solicit money for, and transfer money to, state and local party committees. BCRA simply requires that the money be raised in accordance with FECA. Thus, the national soft money ban does not prevent the national parties from pooling their resources with their state and local counterparts "in furtherance of

common political goals," Buckley, 424 U.S. at 22; it merely restricts the national parties to contributions that are raised pursuant to the "hard money," i.e., the contribution, limitations of FECA.

Moreover, BCRA does not prevent the national, state, and local parties from conferring about spending priorities or any other issues. There is nothing in BCRA that purports to restrict the ability of party committees to confer about campaign strategy.

2. The national party soft money ban is fully consistent with the Equal Protection component of the Fifth Amendment.

Plaintiffs contend that BCRA violates the Fifth Amendment's equal protection guarantee by placing restrictions on national parties that do not apply to certain other types of organizations and individuals. See RNC Compl. ¶¶ 72-77; McConnell Second Amend. Compl. ¶ 102. It is important to note at the outset that, in many significant respects, Congress has treated political parties more favorably than other entities. For example, political parties are permitted to receive far more extensive contributions from individuals than are non-party political committees. See 2 U.S.C. 441a(a)(1). In addition, political parties can make much greater contributions to federal candidates in the form of coordinated expenditures than can other entities or individuals. See 2 U.S.C. 441a(d). And, unlike any other entity, a political party may transfer hard money to other political committees within its party without limitation. See 2 U.S.C. 441a(a)(4). Congress also has given party committees a multi-million-dollar federal subsidy for their quadrennial conventions, see 26 U.S.C. 9008, a windfall that is not available to other entities.

The national soft money ban was enacted explicitly to address the special risk of corruption that unregulated donations to political parties present. Professor Green explains that political parties

"play a distinctive and in many ways privileged role" in the political process, and "[e]ven the largest political action committees cannot begin to approach the political scope, influence, or depth of electoral support characteristic of the Republican or Democratic Parties." D. Green Expert Rep. at 8. Plaintiffs' expert likewise acknowledged that generally no other organizations in American politics are as closely related to federal candidates as the political parties. See La Raja Cross Tr. (Oct. 15, 2002) at 51-53. Indeed, the fundamental goal of political parties is to gain control of the government. Thus, the national parties are principally interested in electing candidates from their members and winning electoral majorities. See D. Green Expert Rep. at 8-9 & n.10. Among other things, the parties recruit and endorse candidates, organize the slate of candidates presented to voters, organize legislative caucuses that assign legislators to committees, and elect legislative leadership. Id. at 7-8. The national party committees, moreover, "are headed by or enjoy close relationships with their leading officials, individuals who by virtue of their positions, reputations, and control of the legislative party machinery have special influence on their colleagues," and donations to the parties "especially six and seven figure soft money contributions are usually made by the arrangement with or knowledge of these most influential members of the party." Krasno & Sorauf Expert Rep. at 12-13.

—

This unique relationship between the parties and federal candidates and officeholders creates a special danger of corruption stemming from the unregulated solicitation and acceptance of contributions by the political parties, which, Professor Green explains, "attack the very foundation

of electoral accountability." D. Green Rebuttal Expert Rep. at 19. As discussed supra, pt. I.B.2.b., Congress recognized the acute dangers of corruption associated with the parties' extremely close relationship to federal officeholders and influential party leaders, which permits parties to offer access to federal officials in exchange for large contributions, and can put significant pressure on federal officeholders and candidates to court large donors and accommodate their interests. See, e.g.,148 Cong. Rec. S2115 (Mar. 20, 2002) (Sen. Levin). As the Supreme Court has recognized, donors give to the political parties "with the tacit understanding that the favored candidate will benefit," contributions to a party have been "used as a funnel from donors to candidates," and substantial soft money donations "turn the parties into matchmakers whose special meetings and receptions give the donors the chance to get their points across to the candidates." Colorado II, 533 U.S. at 458, 461 & n.25. A vast "'web of relations link[s] major donors, party committees, and elected officials.'" Id. at 463 (quoting Briffault, Political Parties and Campaign Finance Reform, 100 Colum. L. Rev. 620, 652 (2000)). "Free flowing soft money donated to parties and party leaders creates cascades of obligation-driven and favor-currying motives in politicians that are separate from and in tension with electoral outcomes." D. Green Rebuttal Expert Rep. at 19.

In short, the unique problems of perceived and actual corruption posed by soft money donations to the political parties provides a compelling basis for BCRA's focus on the parties. No other entities are as closely identified, or share as many interests, with federal candidates and officeholders. No other entities can offer the same access to a large and diverse group of powerful lawmakers, and no other entities have the same level of influence over federal candidates and

officeholders. Accordingly, the national party soft money ban is fully consistent with equal protection principles.[79]

3. The national party soft money ban is not unconstitutionally vague or overbroad.

Plaintiffs allege that the terms "solicit" and "direct" in 2 U.S.C. 441i(a)(1) are unconstitutionally vague, as is the reference in 2 U.S.C. 441i(a)(2) to "any entity that is directly or indirectly established, financed, maintained, or controlled by such a national committee." See RNC Compl. ¶ 89; McConnell Second Amend. Compl. ¶ 103. The FEC's regulations, however, resolve any possible vagueness problems with respect to those provisions. See 11 C.F.R. 300.2 (67 Fed. Reg. 49,064, 49,121 (July 29, 2002)); see also 67 Fed. Reg. 49,081 (July 29, 2002).

A statute is void for vagueness only if it "'forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.'" United States v. Lanier, 520 U.S. 259, 266 (1997). As the D.C. Circuit has repeatedly explained, "the Constitution does not require unattainable feats of statutory clarity." United States v. Barnes, 295 F.3d 1354, 1366 (D.C. Cir. 2002) (citation omitted). "Since words, by their nature, are imprecise instruments, even laws that easily survive vagueness challenges may have gray areas at the margins." Id. (citation omitted). "Condemned to the use of words, we can never expect mathematical certainty from our language." Grayned v. City of Rockford, 408 U.S. 104, 110 (1972).

[79] Moreover, to the extent plaintiffs contend that the national soft money ban puts the parties at a disadvantage with respect to corporations and unions, their claim plainly lacks merit. As the Supreme Court recognized in Cal Med, an equal protection challenge to the federal campaign laws cannot be sustained when the entity claiming unequal treatment is accorded more favorable overall treatment under those laws. 453 U.S. at 200-01. Thus, the Court rejected an equal protection challenge to FECA's contribution limits applicable to multicandidate committees brought by an unincorporated association because FECA as a whole "imposes far fewer restrictions on individuals and unincorporated associations than it does on corporations and unions." Id. Here, political parties are similarly subject to much less restriction than are corporations and unions, which are prohibited from making any contributions to political candidates or campaigns from their general treasury funds. See 2 U.S.C. 441b(a). A political party committee, by contrast, not only may make contributions to political candidates and campaigns, see 2 U.S.C. 441a(a)(2), but (unlike any other entity) also may transfer hard money to other political committees within its party without limitation, see 2 U.S.C. 441a(a)(4), and can make much higher coordinated expenditures on behalf of a federal candidate or campaign committee than any other entity, see 2 U.S.C. 441a(d).

The Supreme Court has rejected vagueness challenges to the term "solicit" in other political contexts, see Broadrick v. Oklahoma, 413 U.S. 601, 605-08 (1973), and no different result is warranted here. Indeed, the FEC's regulations adopt a narrow definition of that term: "solicit" means "to ask that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value, whether the contribution, donation, transfer of funds, or thing of value, is to be made or provided directly, or through a conduit or intermediary. A solicitation does not include merely providing information or guidance as to the requirement of particular law." 11 C.F.R. 300.2(m) (67 Fed. Reg. 49,122 (July 29, 2002)).

The FEC's regulations furnish similar clarity with respect to the phrase "to direct," which is defined as follows: "to ask a person who has expressed an intent to make a contribution, donation, or transfer of funds, or to provide anything of value, to make that contribution, donation, or transfer of funds, or to provide that thing of value, including through a conduit or intermediary. Direction does not include merely providing information or guidance as to the requirement of particular law." 11 C.F.R. 300.2(n) (67 Fed. Reg. 49,122 (July 29, 2002)).

Moreover, the FEC has established a detailed test to determine whether a committee of a political party "directly or indirectly established, finances, maintains, or controls an entity." See 11 C.F.R. 300.2(c) (67 Fed. Reg. 49,121 (July 29, 2002)). The test sets forth ten factors that must be "examined in the context of the overall relationship between [the] sponsor and the entity," 11 C.F.R. 300.2(c)(2), including whether the sponsoring committee owns controlling interest in voting stock in the entity; has the authority or the ability to participate in the governance of the entity; has authority over decision-making employees or members of the entity; has common or overlapping membership, officers, or employees with the entity, or provides a significant quantity of funds or

goods to the entity; or, in addition, whether there are other circumstances indicating "a formal or ongoing relationship between the sponsor and the entity." 11 C.F.R. 300.2(c)(2)(i)-(x). Similar factors have been in the FEC's regulations for more than a decade. 11 C.F.R. 100.5(g), 110.3 (1990). The regulations also provide a "safe harbor" for the activities of an entity occurring before November 6, 2002, and they state that an entity may request an advisory opinion from FEC to "determine whether the sponsor is no longer directly or indirectly financing, maintaining, or controlling the entity for purposes of this part." 11 C.F.R. 300.2(c)(3), (4).

There is no basis for finding any of the challenged terms vague on their face. As the Supreme Court has made clear, the fact that "[a] statute may leave room for uncertainty at the periphery" does not render it unconstitutionally vague. NRWC, 459 U.S. at 211; see also United States v. Petrillo, 332 U.S. 1, 7 (1947); Barnes, 295 F.3d at 1366. The existence of a theoretical possibility of confusion in some future application is particularly insignificant where, as here, the regulatory agency has provided a mechanism for regulated entities to obtain prompt advisory opinions if necessary. See 2 U.S.C. 437f(a) (requiring FEC to issue advisory opinions no later than 60 days after submission of a complete written request and no later than 20 days after a request submitted within 60 days of a federal election involving the requesting party). Indeed, "to the extent that it offers a prompt means of resolving doubts with respect to the statute's reach, the advisory opinion . . . mechanism written into the FECA . . . under which the Commission is authorized to give advice concerning the Act's application to specific factual situations, . . . mitigates whatever chill may be induced by the statute and argues against constitutional adjudication on a barren record." Martin Tractor v. FEC, 627 F.2d 375, 384-85 (D.C. Cir.) (footnotes omitted), cert. denied, 449 U.S. 954 (1980); see also United States Civil Serv. Comm'n v. Nat'l Ass'n of Letter Carriers, 413 U.S.

548, 580 (1973); Blount v. SEC, 61 F.3d 938, 948 (D.C. Cir. 1995). Reliance on an FEC advisory opinion "is a defense to criminal prosecution or civil suit." Martin Tractor, 627 F.2d at 385; see 2 U.S.C. 437f(c)(2); FEC v. National Rifle Association, 254 F.3d 173, 185 (D.C. Cir. 2001). Because plaintiffs "may seek and obtain advice from the [FEC] and thereby remove any doubt there may be as to the meaning of the law," National Ass'n of Letter Carriers, 413 U.S. at 580, their facial vagueness challenge lacks merit.

4. The national party soft money ban is fully consistent with the Tenth Amendment and principles of federalism.

Plaintiffs allege that the national soft money ban violates the Tenth Amendment and principles of federalism by prohibiting the national parties from raising or spending soft money in support of state or local elections. See McConnell Second Amend. Compl. ¶ 101; RNC Compl. ¶¶ 32-41. But Congress properly recognized that fundraising by national party committees presents a serious threat to the integrity of the federal political system, even where the fundraising is not ostensibly aimed at providing direct support for the election of a federal candidate. As Representative Shays explained, "[b]ecause the national parties operate at the national level, and are inextricably intertwined with federal officeholders and candidates, who raise the money for the national party committees, there is a close connection between the funding of the national parties and the corrupting dangers of soft money on the federal political process. The only effective way to address this problem of corruption is to ban entirely all raising and spending of soft money by the national parties." 148 Cong. Rec. H408-09 (Feb. 13, 2002) (Rep. Shays). As discussed in detail above, unregulated donations to the parties, like contributions to candidates, have the potential to create obligated federal officeholders. See supra at pt. I.B.2.b. Similarly, solicitations on behalf of

a party, like solicitations on behalf of a candidate, can coerce potential donors to make contributions in order to avoid possible adverse legislative consequences. See supra at pt. I.B.2.d; see also McCain Decl. ¶ 21. Moreover, money is fungible. Even if a national party agreed to use such funds only for activity that affects only state or local elections, the party and federal candidates nonetheless could benefit from such donations: the availability of those funds for state and local election activity would free a corresponding amount of funds for the party to use in election activity to benefit federal candidates. _____ Thus, the ultimate use made of any given contribution or donation to a national party committee can have little relationship to its potential to corrupt the federal political process.

Because the national parties' fundraising practices present a clear danger of corruption at the federal level, Congress had ample authority to regulate those practices, even where the funds raised are to be used to support non-federal election activity. The Elections Clause grants Congress the power to regulate elections of members of the House of Representatives and the Senate, Buckley, 424 U.S. at 14 n.16. The Supreme Court has also recognized "broad congressional power to legislate in connection with the elections of the President and Vice President," Buckley, 424 U.S. at 14 n.16, and congressional authority to regulate party primaries, United States v. Classic, 313 U.S. 299 (1941). For the reasons explained above, the solicitation, receipt, and transfer of soft money by national parties has a direct effect on federal elections and presents a particularly potent opportunity for corruption of federal candidates and officeholders. The national party soft money ban, accordingly, falls squarely within Congress's authority to regulate federal elections and protect the integrity of the federal government.[80] The Tenth Amendment poses no bar to the valid exercise

[80] "If the government of the United States has within its constitutional domain no authority to provide against these evils, if the very sources of power may be poisoned by corruption . . . , without legal restraint, then, indeed, is the country in danger." Bourroughs, 290 U.S. at 547 (quoting Ex parte Yarbrough, 110 U.S. 651, 667 (1884)).

of Congress's delegated authority under Article I. See New York v. United States, 505 U.S. 144, 156 (1992); see also Burroughs v. United States, 290 U.S. 534, 544-45 (1934) (regulation of national party committees "in no sense invades any exclusive state power").[81]

5. The prohibition against the solicitation of soft money by officers or agents acting on behalf of a national party committee is constitutional.

The chairs of the California Democratic and Republican parties, who also sit on the executive committees of their respective national party committees, CDP Compl. ¶¶ 12, 16, challenge BCRA's prohibition against "any officer or agent" of a national committee "solicit[ing], receiv[ing], or direct[ing] to another person a contribution, donation, or transfer of funds or any other thing of value, or spend[ing] any funds, that are not subject to the limitations, prohibitions, and reporting requirements" of the Act. 2 U.S.C. 441i(a). Those plaintiffs challenge that provision on the ground that it would prevent them, as officers of national party committees, from raising soft money for their state committees. CDP Compl. ¶ 81, 84-86. That challenge rests on a fundamental misreading of the statute.

The prohibition against officers and agents of the national party committees raising or spending soft money applies only to the extent that the officer or agent is "acting on behalf of such a national committee." 2 U.S.C. 441i(a)(2) (emphasis added). The FEC's implementing regulations confirm what the statutory text already makes plain. See 11 C.F.R. 300.2(b) (67 Fed. Reg. 49,121 (July 29, 2002)) (defining "agent" to refer to any person with actual authority to engage in activities "on behalf of" the relevant organization). And the FEC's explanation of its regulations leaves no doubt that "individuals, such as State party chairmen and chairwomen, who also serve as members

[81] In any event, the record in this case makes clear that many national party activities and the majority of funds expended by the national parties are spent to influence federal elections, even when those activities and funds are directed to party organizations at the state and local level. See supra at 28-36; infra at 100-02.