of their national party committees can, consistent with BCRA, wear multiple hats, and can raise non-Federal funds for their State party organizations without violating the prohibition against non-Federal fundraising by national parties." 67 Fed. Reg. 49,083 (July 29, 2002). Accord McCain Decl. ¶ 21. Thus, to the extent that the plaintiffs merely seek to solicit money as officers of, and on behalf of, the state party, BCRA poses no obstacle.

II. BCRA'S LIMITATIONS ON THE USE OF SOFT MONEY BY STATE-LEVEL PARTY COMMITTEES ARE CONSTITUTIONAL.

A. The Restrictions on State-Level Committees' Use of Soft Money for Federal Election Activity Are Closely Drawn to Prevent the Appearance and Reality of Corruption in Federal Elections.

In addition to imposing a soft money ban on national party committees, BCRA also restricts the use of soft money by party committees at the state, district, and local levels. Unlike national party committees, however, state-level party committees are not subject to a complete ban on the solicitation and disbursement of soft money. BCRA only requires that they generally use hard money to fund "Federal election activity." 2 U.S.C. 441i(b)(1). BCRA leaves state-level party committees entirely free under federal law to use soft money to fund various activities that affect only state or local elections. See 2 U.S.C. 431(20)(B). Moreover, BCRA includes a provision the "Levin Amendment" which authorizes state-level party committees to use soft money in limited quantities to fund certain "Federal election activity" that affects both federal and state elections held on the same day. See 2 U.S.C. 441i(b)(2)(A).[82/]

[82/] See also 148 Cong. Rec. H409-10 (Feb. 13, 2002) (Rep. Shays). The Levin Amendment permits state-level party committees to use soft money to fund voter registration activity within 120 days of a federal election and get-out-the-vote, voter identification, and generic campaign activity in connection with a federal election. See 2 U.S.C. 441i(b)(2)(A), 431(20)(A)(i), (ii). In most instances, this soft money must be allocated with hard money, 2 U.S.C. 441i(b)(2)(A), and must be raised in increments not exceeding $10,000, 2 U.S.C. 441i(b)(2)(B)(iii). Hard and soft money used pursuant to the Levin Amendment must be raised by the party committee that is spending it, not transferred from another committee. 2 U.S.C. 441i(b)(2)(B)(iv).

BCRA's state-level party provisions are supported by the same interests as the ban on soft money by national party committees. Just as national party committees have been used as conduits for corporations, unions, and large individual donors to evade federal contribution and source limitations, so, too, have state-level party committees. Congress recognized that allowing state-level party committees to continue to expend unlimited amounts of unregulated funds on activity that influences federal elections would leave open a gaping loophole in federal law, allowing donors to evade federal contribution and source limitations, and thereby promote the appearance and reality of political corruption. As Senator McCain explained:

> In order to close the existing soft money loophole and prevent massive evasion of Federal campaign finance laws, the soft money ban must operate not just at the national party level but at the State and local level as well. We have authority to extend the soft money reforms to the State and local level where it is necessary, as it is here, to protect the integrity of Federal elections. Closing the loophole is crucial to prevent evasion of the new Federal rules.

148 Cong. Rec. S2138-39 (Mar. 20, 2002); see also D. Green Expert Rep. at 16-17.

The state-level parties have played a central role in the soft money system from its inception and have materially assisted the national parties' efforts to circumvent FECA by using money raised outside FECA's limitations to support federal election campaigns. The national parties have transferred millions of dollars in soft money to the state parties, over $265 million (roughly one-half of their receipts) in the 2000 election cycle alone. Compare Biersack Decl. Tbl. 8 with id. Tbl. 2. The state parties have used those funds in large measure to support federal election activity, and under fewer restrictions than the national parties. As Dr. Mann explains, "since the advent of soft money, national parties have used state parties primarily as vehicles for advancing federal election campaign objectives. The state parties have been willing partners with their national counterparts

in seizing the opportunities presented by the soft money system to boost their federal candidates." Mann Expert Rep. at 30.

Soft money that the national parties solicit for or transfer to state parties is used to promote the campaigns of federal candidates, frequently through media advertising directed or orchestrated by the national parties. _____

See also supra at 30-35. As Senator Thompson explained, in the 2000 election, "Republican and Democratic Senate candidates set up joint fundraising committees, joining with party committees, to raise unlimited soft money donations. The joint committees then transferred the soft money funds to their Senate party committees, which transferred the money to their state parties, which spent the soft money on 'issue ads,' targeted get-out-the-vote and other activities promoting the federal candidates who had raised the money." 147 Cong. Rec. S3251 (Apr. 2, 2001) (Sen. Thompson); see also id. at S3252-55;

The national parties frequently transfer soft money to state parties because they can achieve a "better ratio of hard to soft dollars than if they spent the money themselves." Magleby Expert Rep. at 37; see also supra at 30-35. Under the FEC's regulations, see 11 C.F.R. 106.5, state parties are able to spend a larger proportion of soft money on activities that may benefit both federal and state candidates than the national parties are permitted to use. Thus, the more favorable ratio applicable to state parties encourages national parties to "launder" a portion of their soft money by

transferring it to state parties, where a larger proportion of it can be used on federal campaign activity. See supra at 30-35; The national parties likewise solicit soft money donations to state party committees to provide assistance to federal campaigns in those states. See, e.g., Hassenfeld Decl. ¶ 9; Kirsch Decl. ¶ 9; Wirth Decl. Ex. A ¶¶ 5-6 (congressman raised money for state party);

Tellingly, the national parties transfer most soft money to states where there are highly competitive federal races. See Magleby Expert Rep. at 37-38, 39; supra at 30-35; Fowler Decl. ¶ 15; Professor Magleby has found that state party officials "readily acknowledge they are simply 'pass throughs'" for national soft money funds paid to "the vendors providing the broadcast ads or direct mail." Magleby Expert Rep. at 38-39. The national party committees thus "exercise a great deal of control over how soft money is spent," after it is transferred to state parties. Id. at 38; ___ Indeed, in "a few instances where party committees lack confidence in how state parties will utilize the soft money transferred to them, the national parties have spent the money from Washington and foregone the more favorable soft/hard ratio generally available to the state parties." Magelby Expert Rep. at 38.[83]

[83] Even when national parties provide money to assist state candidates, the funds are often used to influence activities affecting federal elections, such as redistricting. State legislatures determine the boundaries of the districts from which members of the House of Representatives are elected, and "[t]he chances that a House incumbent will be ousted by unfavorable district boundaries are often greater than the chances of defeat at the hands of the typical challenger." D. Green Expert Rep. at 11. House members, and the national parties to which they belong, thus "have a tremendous incentive to be attuned to the state legislature and the state party leadership." Id. National party organizations therefore "have been flooding the states with campaign donations, both soft money and hard, to influence the redistricting process." Id. at 12 (citation omitted); _____

The fact that state parties have facilitated the use of soft money by national parties in federal elections demonstrates the crucial need for § 441i(b). If BCRA only regulated soft money contributed to national party committees, donors would simply funnel soft money in unlimited amounts to state and local party committees to influence federal elections, allowing the same circumvention of FECA's contribution and source limits that the national party soft money ban was enacted to eliminate. See D. Green Expert Rep. at 5, 7, 12-13. As a result, "any successful attempt to limit national party soft money activity must perforce prevent easy evasion through surrogates such as state and local parties." Mann Expert Rep. at 31. Thus, BCRA's state-level soft money provisions prevent circumvention of longstanding limitations on contributions to candidates and political parties and the recently enacted national party soft money ban. Indeed, when the Supreme Court in Colorado II explained the role of political parties in circumventing federal contribution limits, it was a state party whose activities were at issue. See 533 U.S. at 439.

At the same time, BCRA leaves open ample opportunity for state-level party committees to raise funds for federal or state election activity. The statute doubles the amount of hard money that persons can contribute to state party committees, from $5,000 to $10,000 per year. See 2 U.S.C. 441a(a)(1)(D). That is highly significant. Even under the $5,000 annual limit under prior law, state party committees proved their ability to raise ever-increasing amounts of hard money: hard money receipts by seven state parties initially involved in this litigation rose from $111.2 million in 1991-92, to $180.5 million in 1995-96, to $309.6 million in 2000. See Biersack Decl. Tbl. 11.

BCRA not only doubles the limit on contributions of hard money to state parties, it allows state-level party committees to use non-federal funds subject to the Levin Amendment for voter registration activity within 120 days of a federal election and voter identification, get-out-the-vote,

and generic campaign activity in connection with a federal election. See 2 U.S.C. 431(20)(A)(i), (ii), 441i(b)(2)(A). And BCRA leaves state and local party committees entirely free to raise and spend soft money in unlimited amounts for activity that has no impact on federal elections. See 2 U.S.C. 431(20)(B).

In short, BCRA "represents a balanced approach which addresses the very real danger that Federal contribution limits could be evaded by diverting funds to State and local parties, which then use those funds for Federal election activity. At the same time, the [statute] does not attempt to regulate State and local party spending where this danger is not present, and where State and local parties engage in purely non-Federal activities." 148 Cong. Rec. S2138-39 (Mar. 20, 2002) (Sen. McCain).

BCRA thus ensures that "when a State party is spending money on Federal elections, it has to be hard money." 147 Cong. Rec. S2941 (Mar. 27, 2001) (Sen. Feingold). It accomplishes that goal by generally requiring state parties to use only hard money to fund "Federal election activity." 2 U.S.C. 441i(b)(1). Congress carefully defined "Federal election activity" to reach only activity that affects federal elections and that Congress therefore has a strong interest in regulating. As Senator Feingold explained:

> We all know that voter registration in States helps Federal candidates. Likewise, get out the vote activity and generic campaign activity like general party advertising when Federal candidates are on the ballot. Those kind of activities, regardless of how laudable they are and how much we want to encourage them, assist Federal candidates in their election campaigns. So we believe they must be paid for with Federal money. Obviously, so should public communications that refer to a clearly identified federal candidate and support or oppose a candidate for that office.

147 Cong. Rec. S2941 (Mar. 27, 2001); _____

To be sure, some of that activity can affect state as well as federal elections. But that does not divest Congress of authority to regulate it. To the contrary, Congress has long recognized that voter registration and get-out-the-vote activities influence federal elections and accordingly has regulated the funds that can be used for such activities. Since 1979, "FECA unambiguously [has] require[d] that state party committee money spent for . . . volunteer materials, voter registration, and 'get-out-the-vote' activities . . . must be paid for solely from funds subject to the limitations and prohibitions of the FECA" to the extent that the expenditures are to influence a federal election. Common Cause v. FEC, 692 F. Supp. 1391, 1396 (D.D.C. 1987) (emphasis in original); see supra at 24-26. The power of Congress or the FEC to impose contribution limits on the raising of funds used for such activities cannot be seriously questioned. See 692 F. Supp. at 1396 ("It is possible that the . . . [FEC] may conclude that no method of allocation will effectuate the Congressional goal that all monies spent by state political committees on those activities . . . be 'hard money' under the FECA.") (emphasis in original).

The impact of such activities on federal elections is manifest. As Professor Green explains, "[b]ecause the partisan proclivities of the electorate express themselves toward both state and federal candidates, state parties influence federal elections directly even when they mobilize their supporters on behalf of a candidate for state office." D. Green Expert Rep. at 13 (emphasis in original); see also id. at 13-14 (discussing study of 1992 California election revealing that those who voted for a state candidate of a particular party were more than 5 times more likely to vote for a federal Senate candidate of the same party than for the candidate from the opposing party, and that of the more than 2.1 million voters casting a ballot for a Democratic or Republican state assembly candidate, "86.4% cast ballots for the same party when voting for U.S. House candidates"); id. at 14 ("[A] campaign

that mobilizes residents of a highly Republican precinct will produce a harvest of votes for Republican candidates for both state and federal offices."); see also D. Green Rebuttal Expert Rep. at 13-14 (so-called voter mobilization activities such as direct mail and commercial phone banks have a persuasive impact on voters);

Requiring state party committees to use hard money and Levin funds for federal election activity does not impermissibly threaten to render state and local political parties "useless." Shrink Missouri, 528 U.S. at 396. Plaintiffs' own expert concedes that they "will certainly adapt and make themselves players in the campaign process" after BCRA takes effect. La Raja Cross Tr. at 148.

In the years leading up to BCRA, soft money proved easy to obtain, and party committees at all levels accordingly became strongly dependent on such funds. See Green Rebuttal Expert Rep. at 20-22; Biersack Decl. Tbl. 2. In the absence of BCRA, party committees could be expected to follow the path of least resistance and continue to raise large amounts of soft money for use in federal election activity. BCRA, however, was enacted to combat the appearance and reality of corruption that results when parties and their large donors can exploit the soft money loophole and thereby evade federal contribution and source

[84] In any event, only a small proportion of national soft money has been used to fund these activities; the vast majority of soft money raised by the national parties has funded "issue ads" and other activities meant to bolster federal candidates' campaigns. See supra at 34-36. As members of Congress noted, "only a small percentage of party soft money is spent for get-out-the-vote and voter mobilization activities. Only 8.5 cents of every dollar goes to GOTV and voter registration activities while 40 cents of every dollar goes to purchase ads to support or defeat candidates for Federal office." 148 Cong. Rec. S1996 (Mar. 18, 2002) (Sen. Dodd); see also 148 Cong. Rec. H372 (Feb. 13, 2002) (Rep. Moran) (same).

limitations. In light of that problem, state and local party committees have no constitutional entitlement to, or dire need for, soft money to spend on federal election activity:

> Soft money doesn't provide some kind of magic bullet that States need to conduct get out the vote activities, or other activities surrounding Federal elections. The States just need adequate funds to conduct those activities, and McCain-Feingold makes sure that they have the money we double the amount of hard money an individual can give to a state party and increase the aggregate annual limit a commensurate amount.
>
> We want to help state parties stay a vibrant part of our politics. And there are plenty of activities where States can spend whatever soft money they might raise through their State party. We don't attempt to exert any control over what a State party spends on election activities that are purely directed at State elections. But we do say a million dollar contribution to the party from Philip Morris, or the AFL-CIO, or Roger Tamraz, or Denise Rich has the appearance of corruption, whether the money is used for phony issue ads attacking candidates, or voter registration.

147 Cong. Rec. S2941 (Mar. 27, 2001) (Sen. Feingold); see also 147 Cong. Rec. S3251 (Apr. 2, 2001) (Sen. Thompson).

B. Plaintiffs' Challenges to the State-Level Party Provisions Lack Merit.

1. The provision barring transfer of nonfederal funds among party committees is constitutional.

Plaintiffs urge that BCRA unconstitutionally prohibits party committees from pooling their resources through the transfer of funds. But BCRA generally does not prohibit transfers of hard money among party committees. Thus, national party committees are free to transfer hard money to state-level committees; state-level committees are free to transfer hard money to national party committees; and state-level committees are free to transfer hard money to each other. BCRA only regulates the transfer of soft or hard money when such funds are raised pursuant to the Levin Amendment for use in federal election activity.

As explained above, notwithstanding the general prohibition on the use of soft money to influence federal elections, the Levin Amendment permits state-level party committees to raise additional funds subject to certain restrictions for use in certain federal election activity. See 2 U.S.C. 441i(b)(2)(A). Thus, the Levin Amendment provides a state-level party committee with an additional means of funding federal election activity: the committee can fund such activity entirely with hard money, which the committee can raise itself or obtain from another party committee; or the committee can invoke the Levin Amendment, and fund such activity in part with soft money.

The Levin Amendment prohibits party committees from aggregating and transferring funds raised pursuant to that provision. See 2 U.S.C. 441i(b)(2)(B)(iv). In the absence of that prohibition, an unlimited number of state-level party committees would be free to work in concert to aggregate substantial sums of soft money from the same contributors. If such aggregation were permitted, the $10,000 limit on donations of funds under the Levin Amendment would be rendered nugatory.

Moreover, the Levin Amendment is "an effort to enhance [plaintiffs'] speech rights," and its restrictions, accordingly, "must be assessed in that light." See Schenck v. Pro-Choice Network, 519 U.S. 357, 383-84 (1997); see also NRWC, 459 U.S. at 210. Congress was not constitutionally required to provide state-level committees with the option of using Levin funds; it could have required those committees to fund federal election activity entirely with hard money. The conditions that Congress placed on the additional funding option that the Levin Amendment provides are entirely reasonable.

Moreover, the limitation on the use of funds that are "directed" or "spent" by or in the name of a national party or a federal candidate or "directed" through fundraising activities conducted jointly by two or more state, local, or district committees, see 2 U.S.C. 441i(b)(2)(C), is not

unconstitutionally vague or overbroad, CDP Compl. ¶ 70. The word "spent" is reasonably understood to refer to the expenditure of funds. And, as explained above, the term "directed" is defined narrowly to exclude "merely providing information or guidance as to the requirement of particular law." 11 C.F.R. 300.2(n); see also 11 C.F.R. 300.2(m) (similarly limiting the term "solicit"). In light of those narrowing definitions, it is clear that discussions that merely "touch on fundraising, campaign strategies, and spending priorities," CDP Compl. ¶ 70, do not trigger FECA's restrictions. For the reasons explained supra, at 99-106, the statute is reasonably designed to "prevent the Levin [A]mendment from becoming a new loophole" in federal campaign finance laws, 148 Cong. Rec. H369-01, H409-10 (Feb. 13, 2002) (Rep. Shays), by ensuring that large sums of money cannot be freely diverted to party committees in circumvention of contribution limits.[85/]

2. The restrictions on state-level party committees are fully consistent with the Tenth Amendment and principles of federalism.

Plaintiffs' contention that BCRA's state-level party provisions violate the Tenth Amendment and principles of federalism lacks merit. As the Supreme Court has made clear, Congress has broad authority to regulate federal elections, see Buckley, 424 U.S. at 13-14 & n.16, and BCRA's state-level party provisions regulate conduct that directly affects those elections. As explained above, the limitations on the use of soft money by state-level party committees apply only to "Federal election activity," and that term is defined to encompass only activity with a substantial impact on federal elections. See 2 U.S.C. 431(20)(A), 441i(b)(1). Congress expressly excluded the following state and local election activity from the definition of "Federal election activity": (a) public communications that refer "solely to a clearly identified candidate for State or local office," if the

[85/] Plaintiffs also challenge BCRA's prohibition on the transfer of national party hard money to state and local party committees for activity that can be funded with Levin funds. CDP Compl. ¶ 77-79. National party committees, however, are free to transfer hard money in unlimited amounts to their state and local counterparts. All BCRA does is prohibit the use of transferred hard money in federal election activity that is funded pursuant to the Levin Amendment.

communication is not voter registration activity within 120 days of a federal election or get-out-the-vote, voter identification, or generic campaign activity in connection with a federal election; (b) contributions to a candidate for state or local office if the contribution "is not designated to pay for a Federal election activity"; (c) the costs of state, district, and local political conventions; and (d) the costs of "grassroots campaign materials . . . that name or depict only a candidate for State or local office." 2 U.S.C. 431(20)(B). Moreover, FEC's regulations define the activities that constitute federal election activity equally narrowly. 11 C.F.R. 100.24 (67 Fed. Reg. 49,110-11 (July 29, 2002)); see also 67 Fed. Reg. 49,066 (July 29, 2002). Thus, state-level party committees remain free under federal law to raise and spend unlimited sums for use in such nonfederal activity.

As explained above, the conduct that BCRA does regulate is directly linked to Congress's interest in preventing the appearance and reality of corruption in federal elections. Accordingly, the statute falls squarely within Congress's power under Article I to regulate federal elections. Congress's power to regulate elections in which federal candidates are on the ballot, even when state candidates are on the ballot as well, has long been upheld. See, e.g., Ex parte Siebold, 100 U.S. 371, 393 (1879) ("If for its own convenience a State sees fit to elect State and county officers at the same time and in conjunction with the election of representatives, Congress will not be thereby deprived of the right to make regulations in reference to the latter."); United States v. Bowman, 636 F.2d 1003, 1011 (5th Cir. 1981) ("When federal and state candidates are together on the same ballot, Congress may regulate any activity which exposes the federal aspects of the election to the possibility of corruption."). Thus, the Tenth Amendment poses no bar to the valid exercise of Congress's delegated authority under Article I. See supra 96-99. And BCRA's state-level party

provisions do not commandeer the state legislative process or conscript state and local officers. Those provisions simply regulate private conduct that affects federal elections.

3. BCRA's restrictions on state-level party committees do not violate equal protection principles.

Plaintiffs contend that BCRA's state-level party provisions violate the equal protection component of the Fifth Amendment because those provisions treat state-level party committees differently from other organizations. McConnell Second Amend. Compl. ¶¶ 104-11; RNC Compl. ¶¶ 68-82; CDP Compl. ¶¶ 72, 73. As explained supra, at pt. I.C.2, however, Congress has in many important respects treated political parties more favorably than similarly situated entities, allowing the parties to make much greater coordinated expenditures with candidates, and to receive far larger contributions from individuals than nonparty political action committees.

More important, parties perform unique functions: they organize the slate of candidates presented to voters; organize legislative caucuses that assign legislators to committees; and elect legislative leadership. D. Green Expert Rep. at 7-8; see supra at pt. I.C.2. And "whether they like it or not . . . [political parties] act as agents for spending on behalf of those who seek to produce obligated officeholders." Colorado II, 533 U.S. at 452. See D. Green Expert Rep. at 8. In light of those threats, it is entirely proper for Congress to treat party committees differently from other organizations. See Cal Med, 453 U.S. at 183 (Congress can conclude that entities having "differing structures and purposes . . . may require different forms of regulation in order to protect the integrity of the political process").

Congress's decision not to index limits on contributions to state-level party committees for inflation does not violate equal protection principles. Contrary to the contention of the California Democratic Party, CDP Compl. ¶¶ 98-106 (Count VIII), Congress was not required to index limits

on contributions to state and local party committees simply because it indexed limits with respect to other individuals and entities that have a greater impact on federal elections.[86] Congress need not "choose between attacking every aspect of a problem or not attacking the problem at all." Dandridge v. Williams, 397 U.S. 471, 486-487 (1970). The legislative line drawn in this case "has some reasonable basis," Schweiker v. Wilson, 450 U.S. 221, 234 (1981) (citations and internal quotations omitted); Congress could reasonably conclude that contributions to state-level committees would generally have less direct impact on federal elections and, therefore, should be treated differently. Such a distinction does not offend the Constitution even if it is "not made with mathematical nicety or because in practice it results in some inequity." Id. (citations and internal quotations omitted).

As the Supreme Court has repeatedly explained, the determination of a particular contribution limit is a matter of legislative judgment that "need not be 'fine tun[ed].'" Shrink Missouri, 528 U.S. at 388 (quoting Buckley, 424 U.S. at 30). Thus, the Court in Buckley showed substantial deference not only to Congress's determination that unlimited campaign contributions threaten democratic values, but also to Congress's judgment regarding the choice of an appropriate dollar limit. As the Court explained, "[i]f it is satisfied that some limit on contributions is necessary, a court has no scalpel to probe, whether, say, a $2,000 ceiling might not serve as well as $1,000." 424 U.S. at 30 (citation omitted). Thus, the Constitution specifies no precise mathematical formula

[86] The following provisions provide for indexing: 2 U.S.C. 441a(a)(1)(A) (contributions to federal candidate or his authorized committee); 2 U.S.C. 441a(a)(1)(B) (contributions to political committees maintained by a national political party and that are not candidate committees); 2 U.S.C. 441a(a)(3) (aggregate limit on contributions by individuals); 2 U.S.C. 441a(b) (limits on expenditures by presidential candidates that accept federal matching funds); 2 U.S.C. 441a(d) (expenditures by national committees, state committees, or subordinate committees of a state committee in connection with federal election campaigns); 2 U.S.C. 441a(h) (contributions to senatorial candidates by the NRSC, DSCC, or the national committee of a political party).

for calculating permissible contribution limits; "the dictates of the First Amendment are not mere functions of the Consumer Price Index."[87] Shrink Missouri, 528 U.S. at 397.

Nor have the plaintiffs made any showing that the limit is "so low as to impede the ability of [parties] to 'amas[s] the resources necessary for effective advocacy.'" Shrink Missouri, 528 U.S. at 397 (quoting Buckley, 424 U.S. at 21). BCRA doubles the hard money contribution limits applicable to state party committees, and plaintiffs provide no reliable evidence that, under those subtantially higher contribution limits, state party committees will be unable to participate meaningfully in federal elections. See supra at 103-04. If Congress concludes at some time in the future that the impact of inflation warrants an adjustment in the contribution limits, it can make such an adjustment at that time, as it did in BCRA by doubling the previous limit on contributions to state parties.

4. The restrictions on state-level party committees are not unconstitutionally vague or overbroad.

Plaintiffs allege that 2 U.S.C. 431(20)(A)(iii) is unconstitutionally vague. That provision bars state-level party committees from using soft money for "a public communication that refers to a clearly identified candidate for Federal office . . . and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate)." The provision uses commonly understood terms to further a clear and legitimate congressional purpose: preventing the use of soft money to promote or attack candidates for federal office and thereby influence federal elections.

As Senator Feingold explained, the provision is not intended to prohibit "spending non-Federal money to run advertisements that mention that [state candidates] have been endorsed

[87] These same precedents foreclose the Paul plaintiffs' complaint that the limit on contributions to political committees that are not political parties is not indexed for inflation by BCRA. See Paul Compl. ¶¶ 5, 56.

by a Federal candidate or say that they identify with a position of a named Federal candidate, so long as those advertisements do not support, attack, promote or oppose the Federal candidate, regardless of whether the communication expressly advocates a vote for or against a candidate." 148 Cong. Rec. S2143 (Mar. 20, 2002) (Sen. Feingold). Simply promoting the candidacy of a state candidate does not trigger the prohibition; the communications must "support[] or oppose[]" the federal candidate. See id. All the statute prevents is "the laundering of soft money through State candidate campaigns for advertisements promoting, attacking, supporting or opposing Federal candidates." Id.; see supra at 104-05. And, by limiting the statute to references to "clearly identified" candidates for federal office, Congress employed a term that both it and the FEC have already defined, see 2 U.S.C. 431(18); 11 C.F.R. 100.17, and that the Supreme Court in Buckley endorsed, see 424 U.S. at 43-44. As Senator Feingold explained, the term "refers to" also is not unconstitutionally vague. 148 Cong. Rec. S2144 (Mar. 20, 2002) ("A communication that 'refers to a clearly identified candidate' is one that mentions, identifies, cites, or directs the public to the candidate's name, photograph, drawing, or otherwise makes an 'unambiguous reference' to the candidate's identity."); see also 11 C.F.R. 100.29(b)(2) (67 Fed. Reg. 65,210 (Oct. 23, 2002)).

Moreover, any uncertainty in the particular application of the statute can be clarified by seeking an advisory opinion from the FEC. See 2 U.S.C. 437f(a); Martin Tractor, 627 F.2d at 384-86; see also National Ass'n of Letter Carriers, 413 U.S. at 580. As explained above, the statute requires the FEC to provide prompt responses to requests for advisory opinions, 2 U.S.C. 437f(a), and reliance on those opinions can provide a defense to criminal or civil enforcement proceedings, 2 U.S.C. 437f(c)(2). The availability of prompt clarification from the agency further undermines plaintiffs' facial vagueness challenge.

The California Democratic Party plaintiffs contend that the phrase "generic campaign activity" as used in the definition of "Federal election activity" is vague and overbroad. CDP Compl. ¶ 57. The FEC's regulations define the term "generic campaign activity" as "a public communication that promotes or opposes a political party and does not promote or oppose a clearly identified Federal candidate or a non-Federal candidate." 11 C.F.R. 100.25 (67 Fed. Reg. 49,111 (July 29, 2002)). That definition is not overbroad. The legislative record and the record in this case make clear that generic activity promoting a political party benefits federal candidates that are nominated by that party, and that such activity has in fact been employed by the major parties for that purpose. See 147 Cong. Rec. S2940-41 (Mar. 27, 2001) (Sen. Feingold) ("[G]et out the vote activity and generic campaign activity like general party advertising when Federal c andidates are on the ballot . . . assist Federal candidates in their election campaigns. So we believe they must be paid for with Federal money."); supra at 104-06.

Nor is the relevant provision unconstitutionally vague. A reasonable person would understand what constitutes a communication that "promotes or opposes" a political party and not a clearly identified candidate. As clarified in the regulation, the definition is plainly aimed at public communications focusing on the interests of a political party apart from any clearly identified candidate, such as the distribution of literature exhorting voters to "Support Democrats" or "Vote Republican." And any uncertainty regarding the applicability of the statute to particular cases can be clarified by seeking an advisory opinion from the FEC. See supra at 95.

5. The reporting requirements of Title I are constitutional.

BCRA requires that state and local party committees register and file reports with the FEC to the extent they engage in any federal election activity. See 2 U.S.C. 434(e). Those requirements

are "narrowly limited to those situations where the information sought has a substantial connection with the governmental interests sought to be advanced." Buckley, 424 U.S. at 81. The provisions are closely drawn to ensure that state and local party committees are in compliance with the reasonable restrictions that BCRA imposes on those committees and that the public is informed of the extent of federal election activity in which those committees engage. The disclosure "provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office." Id. at 66-67 (footnote omitted). Such disclosure also "deter[s] actual corruption and avoid[s] the appearance of corruption by exposing large contributions and expenditures to the light of publicity." Id. at 67; see also Buckley v. Am. Constitutional Law Found., Inc., 525 U.S. 182, 202 (1999).

The Court in Buckley v. Valeo recognized that those governmental interests are substantial and concluded that the federal disclosure requirements at issue in that case were "a reasonable and minimally restrictive method of furthering First Amendment values by opening the basic processes of our federal election system to public view." 424 U.S. at 82. For similar reasons, BCRA's disclosure requirements readily withstand scrutiny. Even assuming that compliance with those provisions will require expenditure of funds that could exceed the total revenues of such local party committees, that would not provide a basis for invalidation of the statute, let alone invalidation on its face. Indeed, the Court in Buckley rejected a challenge to political committee recordkeeping requirements that applied to contributions as small as $10 and disclosure requirements for aggregated contributions that totaled as little as $100. 424 U.S. at 82-84; see also id. at 71 (sustaining disclosure requirements notwithstanding its recognition that "the damage done by disclosure to the associational interests of . . . minor parties and their members and to supporters of