

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

REPUBLICAN NATIONAL COMMITTEE,  
310 First Street, S.E.  
Washington, D.C. 20003;

MIKE DUNCAN, as a member and as  
Treasurer of the Republican  
National Committee,  
310 First Street, S.E.  
Washington, D.C. 20003;

REPUBLICAN PARTY OF COLORADO,  
1776 South Jackson Street,  
Suite 210  
Denver, CO 80210;

REPUBLICAN PARTY OF OHIO,  
211 South Fifth Street  
Columbus, OH 43215;

REPUBLICAN PARTY OF NEW MEXICO,  
2901 Juan Tabo N.E.  
Suite 116  
Albuquerque, NM 87112;

DALLAS COUNTY (IOWA) REPUBLICAN  
COUNTY CENTRAL COMMITTEE,  
800 Vine street  
P.O. Box 22  
Dallas Center, IA 50063

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,  
999 E Street, N.W.  
Washington, D.C. 20463

Defendant.

CASE NUMBER 1:02CV00874

JUDGE: Colleen Kollar-Kotelly

DECK TYPE: 3-Judge Court

DATE STAMP: 05/07/2002

Civ. No. \_\_\_\_\_

COMPLAINT FOR DECLARATORY  
JUDGMENT AND INJUNCTIVE  
RELIEF

The Republican National Committee ("RNC"), Mike Duncan, as a member and as Treasurer of the RNC, the Republican Parties of Colorado, Ohio, and New Mexico, and the Dallas County (Iowa) Republican County Central Committee bring this action for declaratory and injunctive relief, alleging as follows:

#### INTRODUCTION

1. This is an action challenging numerous provisions of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. No. 107-155, 116 Stat. 81, as violating the First, Fifth, and Tenth Amendments to the United States Constitution and principles of federalism embodied therein. Plaintiffs seek a declaration that numerous provisions of the BCRA are invalid and unenforceable, as well as an injunction barring the Defendant Federal Election Commission from enforcing those unconstitutional provisions.

2. The BCRA amends, and effects a breathtaking expansion of, the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 et seq. ("FECA"). It takes the Nation into uncharted and constitutionally forbidden territory by attempting, as never before in our history, to federalize important aspects of the financing of state and local elections. It also enacts, subject to criminal penalties, restrictions on "issue advocacy" -- that is, speech that does not expressly advocate the election or defeat of a clearly identified federal

candidate -- that have been repeatedly struck down by federal courts as offensive to the First Amendment. In many respects, the restrictions on political activity imposed by the BCRA are even more threatening to free speech and political debate than the restrictions the United States Supreme Court struck down in Buckley v. Valeo, 424 U.S. 1 (1976).

3. The BCRA has been widely portrayed as an effort to prohibit all donations to national political party committees that are not subject to the source and amount restrictions of FECA. To effect this prohibition on so-called non-federal "soft-money" donations to political parties, the BCRA prohibits national political party committees from accepting certain donations from individuals, as well as all donations from corporations and labor unions. In doing so, the BCRA prohibits national party committees from participating in gubernatorial, state legislative, judicial, and mayoral elections, referenda, and other state and local election activity as they are entitled to do by state law -- unless that participation complies with the expansive new federal regime. The BCRA also imposes federal restrictions on the fundraising and spending activities of state, district, and local political party committees on their own behalf and on behalf of candidates for state and local offices running under state and local laws.

4. As it appears in the Statutes at Large, the BCRA covers 36 densely packed pages. Yet the prohibition on raising and spending so-called soft-money by national political party committees occupies just two paragraphs of the statute. The rest imposes all manner of new federal rules that change fundamentally the way individuals, corporations, labor unions, trade associations, candidates, officeholders, advocacy groups, tax-exempt organizations, and national, state, and local political party committees associate with each other, participate in federal, state, and local elections, petition public officials, and engage in public dialogue on political and social issues.

5. The BCRA's new rules favor special interests over parties; they constrain the right of candidates and officeholders to raise money for, and receive money from, party committees; they force state and local political parties to pay for issue advocacy with funds raised subject to federal contribution limits and source prohibitions; they hamper the ability of national party committees and their officials to support state parties and state and local candidates; and they place new limits on political parties' ability to make independent and coordinated expenditures supporting their candidates. Many of these provisions are directly contrary to existing Supreme Court precedent.

6. Moreover, while drastically increasing potential criminal penalties from one year to five years imprisonment for certain violations, the BCRA is a cornucopia of vague and ill-defined terms. The enhanced penalties, coupled with the statute's vagueness, will necessarily chill political speech and association.

7. Collectively, these encroachments on Americans' treasured constitutional rights and on the independent authority of sovereign states to oversee state and local elections within their own borders dangerously extend federal regulatory power over the political process. Motivated as much by its instinct for incumbent protection as by its zeal for "reform," Congress overreached. Fully cognizant that the BCRA raises grave constitutional issues, Congress included "fall-back" restrictions to take effect when certain primary restrictions are voided, and provided expedited judicial review in this Court, with direct appeal to the United States Supreme Court.

#### BACKGROUND

8. On March 27, 2002, the BCRA was signed into law. The Act's effective date is November 6, 2002, but its enactment is intended to have a substantial and adverse effect on the activities of all Plaintiffs named herein.

### The Statutory Scheme

9. The BCRA's principal provisions are divided among five broad titles. Title I ("Reduction of Special Interest Influence") includes the much-touted attempt to prohibit party "soft money" -- that is, a prohibition on donations to national political party committees of funds that were not raised subject to the source and amount restrictions of the FECA but nonetheless are spent on state and local elections fully consistent with state law. It also requires that state, district, and local political party committees use funds raised subject to the FECA's restrictions to pay for what have previously been state political party programs that the BCRA vaguely and broadly re-defines into "federal election activity." The BCRA supersedes other laws of the various sovereign states so that state, district, and local party committees are permitted to finance certain types of "federal election activity," including some voter registration, voter identification, and get-out-the-vote activity, in part with funds that are not raised subject to the FECA's restrictions, only if the funds used for the state share of such activities are raised in amounts no greater than \$10,000, are segregated from the party committee's other funds, and are fully reported to the federal authorities.

10. Title I also prohibits federal candidates and officeholders from participating in raising or spending any funds -- even for state and local parties, in order to support state and local candidates -- for vague and broadly-defined "federal election activity" if those funds are not raised subject to FECA's restrictions.

11. Title II ("Noncandidate Campaign Expenditures") prohibits corporations and labor organizations from using funds not raised subject to FECA's limitations to pay for so-called "electioneering communications." The BCRA provides alternative definitions of "electioneering communication," including a "fall-back" definition in the event that the primary definition "is held to be constitutionally insufficient by final judicial decision." Both definitions include within their ambit -- in a direct affront to the Supreme Court's ruling in Buckley -- communications containing solely issue advocacy that does not expressly advocate the election or defeat of clearly identified federal candidates. In addition, any "person," including any individual, who makes a so-called "electioneering communication" is subject to new disclosure requirements.

12. In an apparent effort to overrule the Supreme Court's First Amendment ruling in Colorado Republican Federal Campaign Committee v. FEC, 518 U.S. 604 (1996) ("Colorado Republican I"), Title II also requires political party

committees to choose between coordinating their political activities with their federal candidates and engaging in independent expenditures in support of their federal candidates. Under the BCRA, a party may not conduct both independent and coordinated expenditures on behalf of the same candidate.

13. Title II also repeals existing Federal Election Commission regulations defining coordinated activity, and purports to impose a more restrictive definition of coordinated activity that is directly contrary to First Amendment precedent.

14. Title III (innocuously titled "Miscellaneous") includes the so-called "Millionaire's Provision," which increases contribution limits, and eliminates any limits on party coordinated expenditures, for the campaigns of candidates for the Senate or House whenever they confront opponents who devote specified amounts of personal wealth to their own campaigns. Although contribution limits may be justified only by the compelling government interest in preventing corruption or the appearance of corruption, the BCRA sets a lower limit for contributions to billionaire candidates flush with funds and a higher limit for pauper candidates strapped for cash. Rather than attempting to prevent corruption, the "millionaire's provision" is aimed at equalizing speech, a governmental purpose for campaign finance restrictions specifically rejected in Buckley.



15. Title IV ("Severability; Effective Date") provides that the Act shall take effect on November 6, 2002, but that funds not raised subject to FECA's limitations may be spent by national party committees only for certain limited purposes up until January 1, 2003. Title IV also provides for expedited judicial review "[i]f any action is brought for declaratory or injunctive relief to challenge the constitutionality of any provision of this Act or any amendment made by this Act."

16. Finally, Title V ("Additional Disclosure Provisions") includes new requirements for publication by the Federal Election Commission on the Internet of reports filed with the Commission.

#### JURISDICTION AND VENUE

17. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331 because it arises under the First, Fifth, and Tenth Amendments to the United States Constitution, as well as under 28 U.S.C. § 2201 because it concerns a declaratory judgment. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) and Section 403 of the BCRA which provides that any constitutional challenge to the BCRA shall be filed in the United States District Court for the District of Columbia and shall be heard by a three-judge court convened pursuant to 28 U.S.C. § 2284.

## PARTIES

18. The Republican National Committee ("RNC") is an unincorporated political association with membership consisting of one female, one male, and the State Republican Party Chairman from each of the fifty states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa. Although the RNC is a political committee as defined by 2 U.S.C. § 431(4), a very substantial part of its activities do not relate to federal elections. The RNC's purposes include promoting the election of Republican candidates to federal, state, and local offices, and promoting Republican positions on issues of local, regional, national, and international importance. In pursuit of these objectives, the RNC engages in frequent communications with its members, officeholders, candidates, state and local party committees, and the general public.

19. Every four years since 1856, the RNC has held a convention. While one purpose of the convention is to nominate the party's candidates for the offices of President and Vice President, the delegates to the convention also adopt a party platform addressing virtually all issues facing the Nation and review and revise the rules governing all Republican Party activities. In effect, during the convention the delegates provide the RNC with the authority and the rules under which it

must govern the Republican Party until the next quadrennial convention. By statute, 26 U.S.C. § 9008, the RNC is entitled to public funds, currently approximately \$13 million, to fund its quadrennial convention. As Congress has recognized, that amount is intended to supplement, not supplant, resources provided by the local city government and local businesses and unions, such as rental and build-out of the convention hall, provision of local transportation services, and other services necessary for a political convention. At the 2000 Republican National Convention, these non-federal resources accounted for more than two-thirds of the funds spent to hold the convention.

20. Mike Duncan is a member of the RNC from the State of Kentucky. Since 2001, he has served as Treasurer of the RNC. As Treasurer, he signs all RNC reports filed with the Federal Election Commission and is personally liable for any violations by the RNC of the FECA, as amended by the BCRA. See 11 C.F.R. § 104.14(d). As an officer of the RNC, he has and, unless prohibited by the BCRA, will continue to "solicit, receive, or direct to" other persons funds not subject to FECA's restrictions.

21. The Republican Party of New Mexico is the state party committee of the Republican Party in the State of New Mexico. It is actively involved in supporting state, local, and federal candidates for office in New Mexico. Under the law of

New Mexico, the Republican Party of New Mexico is permitted to raise and spend corporate, labor union, and individual funds in unlimited amounts in support of state and local candidates.

22. The Republican Party of Ohio is the state party committee of the Republican Party in the State of Ohio. It is actively involved in supporting state, local, and federal candidates for office in Ohio. Under the law of Ohio, the Republican Party of Ohio is not permitted to raise and spend corporate and labor union funds in support of state and local candidates but is permitted to raise funds from individuals in amounts greater than permitted by federal law.

23. The Republican Party of Colorado is the state party committee of the Republican Party in Colorado. It is actively involved in supporting state, local, and federal candidates for office in Colorado. Under the law of Colorado, the Republican Party of Colorado is permitted to raise and spend corporate and labor union funds in limited amounts to support state and local candidates and is permitted to raise and spend contributions from individuals in amounts greater than permitted by federal law.

24. The Dallas County (Iowa) Republican County Central Committee is a local political party committee that has been deemed by the Federal Election Commission to be independent of any state or national political party committee. See Federal

Election Commission Advisory Opinion No. 1978-9. It is actively involved in supporting candidates for office in Iowa.

COUNT ONE

FEDERAL USURPATION OF STATE AUTHORITY TO REGULATE  
THE FINANCING OF STATE AND LOCAL ELECTIONS

25. Plaintiffs incorporate herein by reference paragraphs 1 through 24 above.

26. This count is brought on behalf of the RNC, Mike Duncan, the Republican Parties of Colorado, Ohio, and New Mexico, and the Dallas County (Iowa) Republican County Central Committee to challenge Section 101(a) of the BCRA, which amends Title III of the FECA by adding a new Section 323.

27. "The Constitutional power of Congress to regulate federal elections is well established" and flows from Article I, Section 4 of the United States Constitution, which "grants Congress the power to regulate elections of members of the Senate and House of Representatives." Buckley, 424 U.S. at 13 and n.16.

28. Specifically, Article I, Section 4 (the "Federal Election Clause") provides that "[t]he Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such regulations, except as to Places of choosing Senators." The Supreme Court

has construed the Federal Election Clause to grant Congress power to regulate elections for President and Vice President, in addition to Congressional elections. See Buckley, 424 U.S. at 13 n.16.

29. The Constitution does not grant Congress a similar power to regulate state and local elections. A state's power to regulate its own elections is an essential attribute of state sovereignty and represents a core state function. The power to regulate state and local elections, including the manner in which they are financed, is now and has since the beginning of the Republic been the province of the separate states. This division of authority was reaffirmed and enforced in Oregon v. Mitchell, 400 U.S. 112 (1970), which upheld a federal statute insofar as it lowered the voting age from 21 to 18 in federal elections but struck down the statute insofar as it sought to lower the voting age in state and local elections.

30. Because the Constitution does not grant Congress the power to regulate the financing of state and local elections, the BCRA's intrusion on the sovereign states' power to regulate their own elections is void as a matter of law.

31. As required by the Tenth Amendment to the United States Constitution, the power to regulate the financing of state and local elections, which was "not delegated to the United States by the Constitution, nor prohibited by it to the

states, [is] reserved to the states respectively, or to the people." U.S. CONST. amend. X.

32. The RNC is a national party committee, not a federal party committee. Throughout its existence, the RNC has associated with, and provided financial and other support to, state and local candidates and to its affiliated state, district, and local party committees. Among the support the RNC provides to such candidates and organizations is political advice and assistance including voter mobilization and contact assistance on behalf of the entire ticket, fundraising advice and assistance, candidate training, research, voter education, and money. As publicly reported to the Federal Election Commission, during the 2000 election cycle the national committees of the Republican Party contributed \$12.8 million to state and local candidates. During that same two-year election cycle, the RNC assisted state and local party committees by transferring to them approximately \$130 million. Although these amounts were raised in full compliance with the pertinent state and local laws, they were not subject to the FECA's restrictions. The RNC wishes to continue its historic role of providing support, including direct monetary contributions, to state and local candidates and party committees during the current and future state election cycles.

33. Because the BCRA prohibits the RNC and other national party committees from spending funds that are not subject to FECA's restrictions, enactment of the BCRA forces the RNC to spend all or nearly all such funds before the BCRA takes effect. Further, the RNC must make adjustments to its fundraising strategy and operations in advance of the effective date of the BCRA to prepare to operate under the anticipated ban on such funds. The BCRA therefore has already caused and will continue to cause real and immediate harm to the RNC.

34. Each of the 50 states has in place its own unique statutory and regulatory scheme to regulate contributions to candidates for state and local office. Typically, these statutes and regulations limit the amount, and require the reporting of, contributions to candidates, political committees, and political parties for their activities in state and local elections. These state statutory and regulatory schemes reflect sovereign judgments by state governments about how their campaigns for state office are to be financed and conducted. More than half the states, including the States of New Mexico and Colorado, have decided not to prohibit contributions by corporations and labor unions, and many other states such as Ohio allow contributions from individuals that are larger than those allowed by FECA.



35. The BCRA overrules the sovereign legislative judgments made by these states and allows national party committees to participate in state and local election activity only if every dime of the money used for such purposes is raised in compliance with FECA's restrictions.

36. The RNC desires to continue participating in gubernatorial, state legislative, mayoral, judicial, referenda, and other state elections under the laws determined by that state or locality. The BCRA usurps and overrides the authority of states to control their own election processes, to the real and immediate harm of the RNC, the Republican Parties of Colorado, Ohio, and New Mexico, and the Dallas County (Iowa) Republican County Central Committee.

37. Not only does the BCRA restrict the RNC's ability to fund state election activity, it prohibits RNC fundraising assistance to state and local candidates. For example, new Section 323(a)(1), added by Section 101(a) of the BCRA, prohibits the Chairman of the RNC (or its Treasurer, Plaintiff Duncan) even from sending a fundraising letter on behalf of a gubernatorial candidate, since funds contributed in response to such a solicitation would benefit a state, not federal, candidate.

38. Because Congress lacks any constitutional power to regulate the financing of state, district, and local

elections, the provisions in Section 101(a) of the BCRA, amending FECA to add a new Section 323(a), are void and unenforceable insofar as they: (a) restrict activities of national party committees in state and local elections; (b) restrict the ability of state, district, and local party committees and officials and state and local candidates to receive financial and fundraising support from national party committees and federal candidates and officeholders; and (c) restrict the ability of state, district, and local party committees to disburse funds consistent with state law, but without expressly advocating the election or defeat of a clearly identified federal candidate.

39. By intruding upon the sovereign power of the states to regulate the financing of their own elections, the BCRA violates the Tenth Amendment to the United States Constitution.

40. Moreover, because the BCRA dangerously disrupts the federal-state balance and deprives states of control over state functions essential to the preservation of their independent identity within our system of "dual sovereignty," the BCRA contravenes principles of federalism embodied in the Constitution of the United States.

41. Further, the Federal Government lacks any interest in regulating the financing of state and local

elections sufficient to justify restricting the associational and expressive activities of political parties.

42. The RNC, Mike Duncan, the Republican Parties of Colorado, Ohio, and New Mexico, and the Dallas County (Iowa) Republican County Central Committee seek a declaration that Title I of the BCRA is unconstitutional in its entirety. In the alternative, to the extent that Title I contains constitutionally salvageable provisions that can be severed from the constitutionally offensive provisions, plaintiffs seek a declaration that the constitutionally offensive provisions are unconstitutional. Plaintiffs also seek a permanent injunction against any and all efforts by the Federal Election Commission to enforce Title I, or alternatively its unconstitutional provisions.

#### COUNT TWO

##### **INFRINGEMENT OF FIRST AMENDMENT FREEDOMS OF SPEECH AND ASSOCIATION**

**(Ban on raising or spending non-federal funds  
by national political parties)**

43. Plaintiffs incorporate herein by reference paragraphs 1 through 42 above.

44. This count is brought on behalf of the RNC and Mike Duncan.

45. Section 101(a) of the BCRA provides that beginning on January 1, 2003, a national political party

committee may not solicit, receive, or direct to another person funds or any other thing of value or spend any funds that are not subject to the FECA's restrictions.

46. The RNC wishes to raise funds that are not subject to the FECA's restrictions and to use those funds to finance speech and associational activities that do not involve express advocacy of the election or defeat of clearly identified federal candidates.

47. The activities for which the RNC desires to raise and spend funds not subject to the limitations and prohibitions of the FECA include, but are not limited to, providing support and making contributions to state and local candidates, pursuant to applicable state law; providing support and making contributions to state and local political party committees, pursuant to state law; providing support and making contributions to the Republican Governors Association, the Republican National Legislators Association, or other associations whose purpose is to encourage the election of Republican Party candidates to state and local office and to advance the Party's agenda at the state and local level, pursuant to state law; "issue advertising" through print, broadcast, and other media for the purpose of articulating the Party's views on important public policy issues; voter registration, voter identification, voter education, and get-

out-the-vote efforts in state and local elections; and fundraising for state and local party committees and others who share the principles and ideals of the Republican Party.

48. The unqualified prohibition on national political parties raising or assisting in raising funds that are not subject to FECA's restrictions violates the First Amendment right of free speech in numerous respects. For example, it places restrictions on the funding of core political speech that does not expressly advocate the election or defeat of a clearly identified federal candidate, including speech advocating the election of state and local candidates. Moreover, it restricts the amount of speech in which political parties are able to engage.

49. The unqualified prohibition on national political parties raising or assisting in raising funds that are not subject to the FECA's restrictions violates the First Amendment right of association in numerous respects. For example, it prevents national political party committees from exercising their right of free political association by pooling the resources of party members and contributors in support of campaigns for state and local office and by sharing funds with or raising funds for like-minded party committees and non-party entities and individuals. Further, the prohibition restricts their ability to communicate internally with their own members

and employees on issues having nothing to do with federal elections. In addition, because the prohibition applies to "any entity that is directly or indirectly established, financed, maintained, or controlled by" a national committee, the prohibition has the potential to restrict the ability of the RNC to associate with state, district, and local Republican committees.

50. The unqualified prohibition on national political parties raising or assisting in raising funds that are not subject to the FECA's restrictions is not narrowly tailored to further a compelling governmental interest in preventing corruption or the appearance of corruption of federal officeholders.

51. The RNC and Mike Duncan seek a declaration that Title I of the BCRA is unconstitutional in its entirety. In the alternative, to the extent that Title I contains constitutionally salvageable provisions that can be severed from the constitutionally offensive provisions, they seek a declaration that the constitutionally offensive provisions are unconstitutional. They also seek a permanent injunction against any and all efforts by the Federal Election Commission to enforce Title I, or alternatively its unconstitutional provisions.

COUNT THREE

INFRINGEMENT OF FIRST AMENDMENT FREEDOMS  
OF SPEECH AND ASSOCIATION

(Limitations on raising and spending non-federal funds by state,  
local, and district political party committees)

52. Plaintiffs incorporate herein by reference paragraphs one through 51 above.

53. This count is brought on behalf of the Republican Parties of Colorado, Ohio, and New Mexico, and the Dallas County (Iowa) Republican County Central Committee.

54. The Republican Parties of Colorado, Ohio, and New Mexico, and the Dallas County (Iowa) Republican County Central Committee wish to continue raising funds that are not subject to FECA's restrictions and to use those funds to finance activities that do not involve express advocacy of the election or defeat of clearly identified federal candidates.

55. Section 101(a) of the BCRA, amending FECA to add a new Section 323(b), requires state, district, and local party committees to use funds raised subject to FECA's restrictions for activities that do not include express advocacy of the election or defeat of a clearly identified federal candidate, regardless of applicable state law. New Sections 323(b)(2)(B)(i) and (ii) impose federal restrictions on the financing of even the state portion of both generic and state candidate-specific voter registration, voter identification, and get out

the vote activities, and require use of money raised pursuant to FECA's restrictions for certain broadcast activities, unless the communication "refers solely to a clearly identified candidate for state or local office" and does not include a generic message about other "Republican" tickets. By limiting their ability to freely raise and spend funds consistent with state law, the BCRA causes the state, district, and local party committees real and immediate harm.

56. The Republican Parties of Colorado, Ohio, and New Mexico, and the Dallas County (Iowa) Republican County Central Committee seek a declaration that Title I of the BCRA is unconstitutional in its entirety. In the alternative, to the extent that Title I contains constitutionally salvageable provisions that can be severed from the constitutionally offensive provisions, they seek a declaration that the constitutionally offensive provisions are unconstitutional. They also seek a permanent injunction against any and all efforts by the Federal Election Commission to enforce Title I, or alternatively its unconstitutional provisions.



COUNT FOUR

INFRINGEMENT OF FIRST AMENDMENT FREEDOMS  
OF SPEECH AND ASSOCIATION

(Limitations on "coordinated" and "independent" expenditures)

57. Plaintiffs incorporate herein by reference paragraphs 1 through 56 above.

58. This Count is brought on behalf of the RNC, the Republican Parties of Colorado, Ohio, and New Mexico, and the Dallas County (Iowa) Republican County Central Committee.

59. Section 213 of the BCRA amends section 315(d) of FECA and effectively compels all political party committees, even if legally independent entities, to make an irrevocable collective choice between "independent expenditures" in support of a nominated federal candidate or "coordinated expenditures" in support of that federal candidate. All the committees of a party are bound under the BCRA to do one or the other, but not both.

60. By banning any coordinated party expenditure in support of a nominated federal candidate that follows any independent party expenditure in support of that candidate, Congress has attempted to overrule the decision of the United States Supreme Court in Colorado Republican I. The Court held in Colorado Republican I that parties enjoy a First Amendment right to engage in unlimited independent expenditures because such independent expenditures pose no threat of actual or

apparent corruption of federal candidates. By requiring parties to forego future coordinated expenditures as the "price" of exercising their constitutional right to make independent expenditures, this provision of the BCRA unconstitutionally curtails parties' rights to free speech and association.

61. By banning independent expenditures by any party committee in support of a federal candidate that follow any coordinated expenditures by any party committee in support of that candidate, the BCRA establishes a per se rule that once a coordinated expenditure is made by any party committee, all subsequent expenditures by all other party committees are "coordinated," regardless of intervening events. Because this rule would cause some party expenditures that are "independent" as a matter of law to be treated as "coordinated" expenditures, it curtails parties' rights to free speech and association.

62. The RNC, the Republican Parties of Colorado, Ohio, and New Mexico, and the Dallas County (Iowa) Republican County Central Committee seek a declaration that Title I of the BCRA is unconstitutional in its entirety. In the alternative, to the extent that Title I contains constitutionally salvageable provisions that can be severed from the constitutionally offensive provisions, they seek a declaration that the constitutionally offensive provisions are unconstitutional. They also seek a permanent injunction against any and all

efforts by the Federal Election Commission to enforce Title I, or alternatively its unconstitutional provisions.

COUNT FIVE

INFRINGEMENT OF FIRST AMENDMENT FREEDOMS OF  
SPEECH AND ASSOCIATION AND FIFTH AMENDMENT RIGHT TO DUE PROCESS  
(Definition of "coordination")

63. Plaintiffs incorporate herein by reference paragraphs 1 through 62 above.

64. This count is brought on behalf of the RNC, the Republican Parties of Colorado, Ohio, and New Mexico, and the Dallas County (Iowa) Republican County Central Committee.

65. Section 214 of the BCRA purports to repeal certain regulations promulgated by the FEC, and to instruct the FEC to issue, within 270 days of the BCRA's enactment, new regulations defining coordination of communications with a candidate or political party committee as something less than "agreement or formal collaboration."

66. As this Court has recognized, a definition of coordinated political activity as any "expenditures . . . in cooperation, consultation, or concert with, or at the request or suggestion of," a political party committee is overbroad, vague, and suppresses free speech and association in violation of the First and Fifth Amendments.

67. The RNC, the Republican Parties of Colorado, Ohio, and New Mexico, and the Dallas County (Iowa) Republican

County Central Committee seek a declaration that Title I of the BCRA is unconstitutional in its entirety. In the alternative, to the extent that Title I contains constitutionally salvageable provisions that can be severed from the constitutionally offensive provisions, plaintiffs seek a declaration that the constitutionally offensive provisions are unconstitutional. Plaintiffs also seek a permanent injunction against any and all efforts by the Federal Election Commission to enforce Title I, or alternatively its unconstitutional provisions.

#### COUNT SIX

##### **INFRINGEMENT OF FIFTH AMENDMENT RIGHT TO EQUAL PROTECTION OF THE LAWS**

68. Plaintiffs incorporate herein by reference paragraphs 1 through 67 above.

69. This count is brought on behalf of the RNC, the Republican Parties of Colorado, Ohio, and New Mexico, and the Dallas County (Iowa) Republican County Central Committee.

70. The Fifth Amendment to the United States Constitution requires that the federal government treat similarly situated persons and entities alike.

71. Section 101(a) of the BCRA, amending FECA to add a new Section 323(a) and (b), imposes oppressive restrictions on political party committees solely by virtue of their status as political party committees.

72. As but one example, the RNC, the Republican Parties of Colorado, Ohio, and New Mexico, and the Dallas County (Iowa) Republican County Central Committee are ready, willing, and able to produce and broadcast issue advertisements paid for with funds that were not raised subject to the limitations and prohibitions of the FECA. To the extent that they are required by the BCRA to use funds raised subject to the FECA's restrictions for this purpose, while certain non-party organizations and individuals are not required to do so, the relative ability of the party committees to communicate their messages is effectively restricted. Therefore, they are suffering and will continue to suffer real and immediate harm.

73. Moreover, whereas corporations, unions, and other groups may use non-federal "soft money" to engage in non-broadcast issue speech -- even speech that falls within the overbroad definition of "electioneering communication" -- the RNC, the Republican Parties of Colorado, Ohio, and New Mexico, and the Dallas County (Iowa) Republican County Central Committee may not. Again, the BCRA places political parties at a serious disadvantage in relation to similarly-situated entities.

74. Section 304(a) of the BCRA, which amends and adds to Section 315 of FECA, 2 U.S.C. § 441a, removes the limit on party coordinated expenditures in support of candidates who face opponents willing to spend a designated amount of personal funds

in their election campaigns. By doing so, the BCRA precludes, on pain of criminal penalties, political party committees from treating similarly-situated candidates equally, and interferes with the right of political party committees to support and associate equally with their candidates, in the absence of any compelling government interest.

75. The BCRA prohibits national party committees from raising or spending funds that are not subject to the FECA's restrictions for any purpose, yet it permits individuals, corporations, trade associations, labor organizations, and non-party advocacy groups to raise and spend such funds for a wide range of political purposes. Thus, the RNC must pay for pure issue advocacy and internal communications only with funds raised subject to FECA's restrictions, while persons and entities that are not political party committees may continue to pay for issue advocacy and internal communications using corporate and labor union funds as well as large individual contributions not subject to FECA's restrictions.

76. The BCRA requires state, district, and local party committees to pay for issue advocacy using, in whole or in part, funds that are subject to FECA's restrictions, yet it permits individuals, corporations, trade associations, labor organizations, and non-party advocacy groups to pay for issue advocacy using funds not subject to FECA's restrictions.

77. The BCRA effectively requires national political party committees to make their contributions to state and local candidates using funds raised subject to FECA's restrictions, whereas corporations, non-party advocacy groups, and individuals may use non-federal funds to make contributions to state and local candidates.

78. The disparate treatment of political parties places them at a severe disadvantage in responding to or competing with political speech by persons that are not subject to the same restrictions.

79. There is no constitutionally significant difference between political parties, on the one hand, and individuals, corporations, trade associations, labor organizations, and non-party advocacy groups, on the other hand, that could possibly justify greater restrictions on speech by political parties.

80. The disparate treatment of political parties relative to other speakers is not necessary to prevent corruption or the appearance of corruption.

81. The BCRA denies national, state, district, and local party committees the equal protection of the laws in violation of the Due Process Clause of the Fifth Amendment by subjecting them to limitations on the exercise of their fundamental rights to free speech and association solely because

of their status as political party committees, even though other persons active in the political process, including individuals, corporations, trade associations, labor organizations, and non-party advocacy groups, are not subject to the same limitations.

82. The RNC, the Republican Parties of Colorado, Ohio, and New Mexico, and the Dallas County (Iowa) Republican County Central Committee seek a declaration that Title I of the BCRA is unconstitutional in its entirety. In the alternative, to the extent that Title I contains constitutionally salvageable provisions that can be severed from the constitutionally offensive provisions, they seek a declaration that the constitutionally offensive provisions are unconstitutional. They also seek a permanent injunction against any and all efforts by the Federal Election Commission to enforce Title I, or alternatively its unconstitutional provisions.

#### COUNT SEVEN

#### **INFRINGEMENT OF FIFTH AMENDMENT RIGHT TO DUE PROCESS AND FIRST AMENDMENT FREEDOM OF SPEECH**

#### **(Vagueness)**

83. Plaintiffs incorporate herein by reference paragraphs 1 through 82 above.

84. This count is brought by the RNC, Mike Duncan, the Republican Parties of Colorado, Ohio, and New Mexico, and the Dallas County (Iowa) Republican County Central Committee.



85. Numerous provisions of the BCRA contain undefined terms that are so vague that they do not provide reasonable notice of the circumstances under which a violation of the BCRA would occur, in violation of the Due Process Clause of the Fifth Amendment and the First Amendment. These provisions effectively grant the Federal Election Commission and federal criminal prosecutors unfettered discretion to make arbitrary enforcement decisions. Because it is impossible to anticipate with reasonable certainty how they will be enforced, they will inevitably chill the uninhibited exercise of free speech.

86. Unconstitutionally vague provisions of the BCRA include the definition of "federal election activity," in Section 101(b), amending Section 301 of FECA and creating new Section 301(20)(A)(iii). This provision defines federal election activity to include "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." (Emphasis added) Here and elsewhere throughout the BCRA, there is no indication as to what would qualify as a "reference" to a federal candidate. The definition is especially vague with regard to the meaning of the undefined terms "promotes," "supports," "attacks," or "opposes." What seems like

"promot[ing]" to one person may seem like "attack[ing]" to another.

87. The reference in Section 214(c)(3) of the BCRA to "persons who previously served as an employee of a candidate or a political party" is likewise unconstitutionally vague and overbroad, but does place a restriction on the permissible First Amendment activities that a person who worked in politics may undertake.

88. Numerous provisions of the BCRA contain the term "in connection with" a federal or state election. In Buckley, the Court took care to narrow the construction of this and similar terms. The BCRA does not incorporate those narrowing constructions and does not explain what it means for an activity or communication to be made "in connection with" an election.

89. Section 101(a), adding Section 323(a)(1), states that a national committee of a political party may not "solicit, receive, or direct to another person" anything of value not obtained pursuant to FECA's restrictions. The terms "solicit" and "direct" are not defined. Moreover, new Section 323(a)(2) makes this prohibition applicable not only to national party committees, but to "any entity that is directly or indirectly established, financed, maintained, or controlled by such a national committee."

90. The pervasive vagueness of key terms in the BCRA will necessarily chill the exercise of free speech by Plaintiffs. Uncertainty concerning how those terms will be construed will curtail core political speech by plaintiffs, in violation of their First Amendment right to free speech.

91. The RNC, Mike Duncan, the Republican Parties of Colorado, Ohio, and New Mexico, and the Dallas County (Iowa) Republican County Central Committee seek a declaration that Title I of the BCRA is unconstitutional in its entirety. In the alternative, to the extent that Title I contains constitutionally salvageable provisions that can be severed from the constitutionally offensive provisions, they seek a declaration that the constitutionally offensive provisions are unconstitutional. They also seek a permanent injunction against any and all efforts by the Federal Election Commission to enforce Title I, or alternatively its unconstitutional provisions.

#### **PRAYER FOR RELIEF**

Wherefore, plaintiffs pray for the following relief:

A. An order convening a three-judge district court pursuant to Section 403(a)(1) of the BCRA.

B. An order and judgment declaring unconstitutional Title I of the BCRA and the other aforementioned provisions of the BCRA.

C. An order and judgment enjoining the Defendant Federal Election Commission from enforcing Title I of the BCRA and the other aforementioned provisions of the BCRA.

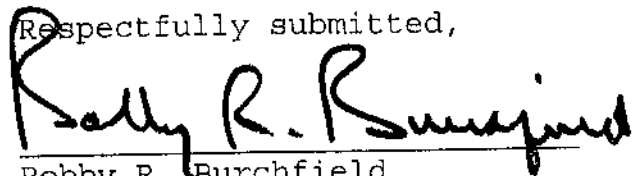
D. Costs and attorneys' fees pursuant to any applicable statute or authority; and

E. Such other and further relief as the Court in its discretion deems just and appropriate.

OF COUNSEL:

Thomas J. Josefiak  
Chief Counsel  
Charles R. Spies  
Deputy Counsel  
REPUBLICAN NATIONAL COMMITTEE  
310 First Street, S.E.  
Washington, D.C. 20003

Respectfully submitted,



Bobby R. Burchfield  
(D.C. Bar No. 289124)  
COVINGTON & BURLING  
1201 Pennsylvania Ave., N.W.  
Washington, D.C. 20004  
(202) 662-6000

Benjamin L. Ginsberg  
(D.C. Bar No. 370658)  
PATTON BOGGS LLP  
2550 M Street, N.W.  
Washington, D.C. 20037  
(202) 457-6000

Michael A. Carvin  
(D.C. Bar No. 366784)  
JONES, DAY, REAVIS & POGUE  
51 Louisiana Ave., N.W.  
Washington, D.C. 20001  
(202) 879-3939

*Attorneys for Plaintiffs*

May 7, 2002