

**United States District Court
District of Columbia**

<p>Republican National Committee et al., <i>Plaintiffs</i></p> <p style="text-align: center;">v.</p> <p>Federal Election Commission, <i>Defendant</i></p>	<p>Civil Case No. <u>14-cv-853 (CRC)</u></p> <hr/> <p>THREE-JUDGE COURT REQUESTED</p>
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Plaintiffs’ Statement of Material Facts

In support of Plaintiffs Motion for Summary Judgment, Fed. R. Civ. P. 60, plaintiffs provide this “statement of material facts” as to which there is “no genuine issue.” LCvR 7(h)(1). The facts are verified in the Verified Complaint for Declaratory and Injunctive Relief (Doc. 1) (“VC”).

1. Plaintiff Republican National Committee (“RNC”) “ha[s] the general management of the Republican Party, based upon the rules adopted by the Republican National Convention.” *The Rules of the Republican Party* at Rule 1. RNC is a “national committee,” which “by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level, as determined by the Commission.” 2 U.S.C. § 431(14). RNC is a “political committee[] established and maintained by a national political party” under 2 U.S.C. § 441a(a)(1)(B), i.e., it is a national-party committee. At the authorization of Chairman Priebus, RNC will (a) establish an NCA, (b) solicit unlimited contributions for, and direct such contributions to, the NCA, and (c) make only independent expenditures regarding federal candidates and

other independent communications that refer to federal candidates from the funds contributed to the NCA. Without the relief requested herein, RNC will not do so. VC ¶ 11.

2. Plaintiff Reince Priebus is the RNC Chairman and, in that capacity, he is “chief executive officer of the Republican National Committee.” *The Rules of the Republican Party* at Rule No. 5(a)(1).¹ He is eligible to vote in an election for the office of the President of the United States. He intends to (a) establish an NCA in RNC, (b) authorize RNC’s NCA to make only independent expenditures regarding federal candidates and other independent communications that refer to federal candidates, and (c) solicit unlimited contributions for, and direct such contributions to, RNC’s NCA, if it were legal to do so. Without the relief requested herein, he will not do so. VC ¶ 12.

3. Plaintiff Republican Party of Louisiana (“LAGOP”) is a “State committee,” i.e., “the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level, as determined by the Commission.” 2 U.S.C. § 431(15). LAGOP is a “political committee established and maintained by a State committee established and maintained by a State committee of a political party” under 2 U.S.C. § 441a(a)(1)(D), i.e., it is a state-party committee. At the authorization of LAGOP Chairman Roger Villere, LAGOP intends to (a) establish an NCA, (b) solicit unlimited contributions to the NCA, and (c) make only independent expenditures regarding federal candidates and other independent communications that refer to federal candidates from the funds contributed to the NCA, when lawful to do so. Without the requested relief, LAGOP will not do so. In addition, LAGOP

¹ Available at <http://www.gop.com/wp-content/uploads/2014/03/Rules-of-the-Republican-Party.pdf>.

intends to use funds not subject to federal source and amount limits for independent federal election activity, when lawful to do so. Without the requested relief, LAGOP will not do so. VC ¶ 13.

4. Plaintiff Roger Villere, Jr. is LAGOP Chairman. He is eligible to vote in an election for the office of the President of the United States. He intends to (a) authorize LAGOP to establish an NCA, (b) solicit unlimited contributions to the NCA, and (c) make only independent expenditures regarding federal candidates and other independent communications that refer to federal candidates from the funds contributed to the NCA, when lawful to do so. Without the requested relief, he will not authorize LAGOP to do so. In addition, he intends to authorize LAGOP to use funds not subject to federal source and amount limits for independent federal election activity, when lawful to do so. Without the requested relief, he will not authorize LAGOP to do so. VC ¶ 14.

5. Jefferson Parish Republican Parish Executive Committee (“JPGOP”) is a “local committee of a political party,” 2 U.S.C. § 441i(b)(1), i.e., a local committee of LAGOP. It intends to use funds not subject to federal source and amount limits for independent federal election activity, when lawful to do so. Without the requested relief, JPGOP will not do so. VC ¶ 15.

6. Orleans Parish Republican Executive Committee (“OPGOP”) is a “local committee of a political party,” 2 U.S.C. § 441i(b)(1), i.e., a local committee of LAGOP. It intends to use funds not subject to federal source and amount limits for independent federal election activity, when lawful to do so. Without the requested relief, OPGOP will not do so. VC ¶ 16.

7. FEC is the government agency with enforcement authority over BCRA and the Federal Election Campaign Act of 1971 (“FECA”), as amended, 2 U.S.C. § 431 et seq. VC ¶ 17.

8. RNC and LAGOP want to create their own NCAs, as other political committees may do,

on the authorization of Plaintiff Priebus for RNC and Plaintiff Villere for LAGOP, subject to all applicable federal laws and regulations and pursuant to the standards of *Colorado-I*, 518 U.S. 604, regarding political-party committees' independent expenditures. VC ¶ 24.

9. FEC's *NCA Guidance* recognizes the right of nonconnected political committees to form NCAs, but "nonconnected political committee" is defined to exclude party committees: "A nonconnected committee is a political committee that is not a party committee, an authorized committee of a candidate or a separate segregated fund established by a corporation of labor or organization. 100.5(a) and 106.6(a)." FEC, *Federal Election Commission Campaign Guide: Nonconnected Committees* at 1 (May 2008).² Thus, FEC's statement of non-enforcement for NCAs does not extend to RNC's or LAGOP's intended NCA. ¶ 25.

10. RNC and LAGOP regularly receive contributions from individuals and will continue to do so. RNC and LAGOP regularly make independent expenditures regarding federal candidates and other independent communications that refer to federal candidates and will continue to do so. RNC's independent-expenditure activity currently must use funds subject to RNC's base contribution limit. *See* 2 U.S.C. § 441a(a)(1)(B) (currently \$32,400/year). LAGOP's independent-expenditure activity currently must use funds subject to LAGOP's base contribution limit. *See* 2 U.S.C. § 441a(a)(1)(D) (currently \$10,000/year, with limit shared between state, district, and local parties within a state). RNC and LAGOP reasonably believe that some of their contributors will contribute to an RNC NCA and an LAGOP NCA, in amounts above the current contribution limits, if the judicial relief sought herein is granted. VC ¶ 26.

11. Plaintiffs Priebus and RNC want to form RNC's NCA as soon as possible and begin so-

² Available at <http://www.fec.gov/pdf/nongui.pdf>.

liciting and raising funds without contribution limits in the NCA for making independent expenditures and independent communications naming federal candidates. Priebus and RNC intend in 2014 to use RNC's NCA to conduct this independent activity in select U.S. Senate and House races. They intend in 2016 to conduct this independent activity in select U.S. Senate and House races as well to support the Republican nominee for President. They intend to do materially similar independent activity in the future. VC ¶ 27.

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

13. LAGOP, JPGOP, and OPGOP want to use funds not subject to federal source and amount limits for independent federal election activity, upon authorization and when legal to do so. However, these plaintiffs are prohibited by 2 U.S.C. § 441i(b) from doing so and will not do so unless they receive the requested relief herein. VC ¶ 29.

14. LAGOP, JPGOP, and OPGOP want to use funds not subject to federal source and amount limits for independent federal election activity in connection with the 2014, 2015, 2016, and 2017 elections. An example of the sort of independent federal election activity they wish to do without having to use federal funds is LAGOP's plans to make independent communications to support the Republican opponent of U.S. Senator Mary Landrieu, who is up for election in No-

vember 2014, that criticize her support for certain government policies, such as Obamacare, without expressly advocating her defeat. These independent communications would be federal election activity because each would be

a public communication that refers to a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified) 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).

2 U.S.C. § 431(20)(A)(iv). Absent the relief sought here, LAGOP would be limited to using federal funds for its planned independent communications. Contributors to LAGOP, JPGOP, and OPGOP are limited by a federal base limit of \$10,000/year, which they must share, in raising federal funds. 2 U.S.C. § 441a(a)(1)(D). VC ¶ 30.

15. In addition, if they receive the requested judicial relief, LAGOP, JPGOP, and OPGOP also intend to use non-federal funds to conduct other federal election activity, such as voter registration, voter identification, get-out-the-vote, and generic campaign activities that would fall within the federal-election-activity definition, in connection with the 2014, 2015, 2016, and 2017 elections. They intend to do materially similar activity in the future. VC ¶ 31.

16. In the future, all Plaintiffs intend to take actions materially similar to those that they desire and intend to take here, if not limited or prohibited by the challenged laws. Given the recurring election-related context, the usual length of time for litigation such as this to be finally resolved, and the ongoing restrictions imposed by challenged laws, there is a strong likelihood that situations similar to those described here will recur without opportunity for full litigation. Thus, even if this case is not fully litigated before 2014, 2015, 2016, and 2017 elections, this case will not be moot because it will be capable of repetition yet evading review. *See, e.g., FEC v. Wisconsin-*

sin Right to Life, 551 U.S. 449, 461-63 (2007) (“*WRTL-IP*”) (Roberts, C.J., joined by Alito, J.) (controlling opinion, *Marks*, 430 U.S. at 193). VC ¶ 32.

17. Plaintiffs will face a credible threat of prosecution if they proceed with their intended activities without the requested relief. VC ¶ 33.

18. If Plaintiffs do not obtain the requested relief, they will not proceed with their intended activities. In such an event, they will be deprived of their constitutional rights under the First Amendment to the United State Constitution and will suffer irreparable harm. There is no adequate remedy at law. VC ¶ 34.

Respectfully submitted,

/s/ James Bopp, Jr.

James Bopp, Jr., D.C. Bar #CO 0041

jboppjr@aol.com

Richard E. Coleson*

rcoleson@bopplaw.com

Randy Elf*

relf@bopplaw.com

THE BOPP LAW FIRM, PC

1 South Sixth Street

Terre Haute, IN 47807-3510

812/232-2434 telephone

812/235-3685 facsimile

Counsel for Plaintiffs

*Admitted Pro Hac Vice

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Certificate of Service

I certify that today I electronically filed the foregoing with the clerk of court using the CM/ECF system, which will notify:

Kevin Deeley	KDeeley@fec.gov JSadio@fec.gov RFreeman@fec.gov VGraham@fec.gov
Harry Summers	HSummers@fec.gov, JSadio@fec.gov KDeeley@fec.gov RFreeman@fec.gov VGraham@fec.gov
Erin Chlopak	EChlopak@fec.gov DKolker@fec.gov JSadio@fec.gov KDeeley@fec.gov VGraham@fec.gov
Greg Mueller	GMueller@fec.gov, EChlopak@fec.gov JSadio@fec.gov KDeeley@fec.gov VGraham@fec.gov
Seth Nesin	SNesin@fec.gov JSadio@fec.gov KDeeley@fec.gov RFreeman@fec.gov VGraham@fec.gov
Charles Kitcher	CKitcher@fec.gov

/s/ James Bopp, Jr.

James Bopp, Jr., DC Bar #CO 0041

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