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DATE: May 29, 2002 *TIME:*

FROM: Charles H. Bell, Jr. *cbell@bmhlaw.com*

TO: Rosemary C. Smith
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COMMENTS: Comments of the California Republican Party on the Commission's Proposed Rulemaking on Political Party Use of Non-federal Feunds.

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May 29, 2002

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VIA FACSIMILE 202/219-3923

Rosemary C. Smith
Assistant General Counsel
Federal Election Commission
999 E Street NW
Washington, DC 20463

Re: Comments of the California Republican Party on the Commission's Proposed Rulemaking on Political Party Use of Non-federal Funds.

To the Commission:

We write on behalf of the California Republican Party to provide our comments on the proposed rules before the Commission to implement the provisions of the Bipartisan Campaign Reform Act of 2002, Pub. L. 107-155, 116 Stat. 81 (March 27, 2002)("BCRA") related to the use by political party committees of non-Federal funds. The notice and proposed rules appeared at 67 Fed. Reg. 35654 (May 20, 2002).

The California Republican Party is the official state party committee for over five million registered Republicans in California. It operates through a state central committee. *See* Cal. Elec. Code §§ 7400-7470. The state central committee numbers over 1,500 members, some 185 members, who are nominees and elected Republican officeholders, and another 750 of their

appointees, together with 650 representatives of Republican volunteer clubs, Republican county central committees and others.

The party's principal goal is to elect Republicans at all levels of government, which it pursues through grassroots organizing, registering voters, assisting voters through absentee ballot and get-out-the-vote programs, supporting candidates directly both financially and in-kind, and expressing the Party's view on issues of the day. The Party raises money for its non-Federal activities under California law, which sets limits, and provides for reporting of receipts and disbursements which in many cases is more rigorous than that required under Federal law. California law allows the Party to accept contributions from corporations and labor organizations.

A more detailed summary of California law is set forth in the joint complaint entitled *California Democratic Party et al. v. Federal Election Commission, et al.*, U. S. District Court for the District of Columbia, Case No. 02-00875 CKK KLH RJL, consolidated with Case. No. 02-0582 CKK KLH RJL (consolidated case number) (referred to herein as "the Party litigation.")

The Commission is aware that the California Republican Party is currently pursuing the Party litigation as a constitutional challenge to the BCRA in federal court. The Party litigation raises separate issues of the law's legality that are not before the Commission. We intend this comment to relate only to the draft regulations, which by necessity assumes that BCRA will be in effect. Accordingly, these comments do not modify, limit, or waive any arguments made before the court in the Party litigation nor do they necessarily represent the views of other plaintiffs in the Party litigation.

I. Comments on Terminology and Definitions

A. "Non-Federal funds"

At the outset, the Party would like to commend the Commission for using the term "non-Federal funds" rather than the colloquial term "soft money." Notwithstanding what some may view as the superior atmospherics created by the undefined term "soft money," it is plain that the press and public remain confused by the term. The phrase "soft money" can be found in contexts ranging from family planning public education campaigns to funding of political conventions to golf tournament fundraising events, and means different things to different people. The Commission has refrained from incorporating popular undefined phrases into the regulations in the past – PAC being but one example. We recommend the Commission use the term "non-Federal funds" in the present context, since it describes more accurately what is at issue: the ability of a political party organization to function under

a new law that imposes federal standards upon an area regulated previously by state and local governments.

B. "Levin Funds"

The Party questions the adoption of the colloquial term "Levin funds" as a regulatory term. We understand that this term had been widely used in negotiations over BCRA and by campaign finance analysts. That term should be reserved for legislative history, and not for regulatory use. With due respect, memorializing a particular lawmaker in the federal regulations is inappropriate. We would suggest a term that cross-references the statute or the regulations – something like "441i(b)(2) funds" or "300.30(b) funds." We believe that such a term will also be more useful to the regulated community as they seek to work through the new rules.

C. "Federal Election Activity"

The Commission has provided regulations for the definition of this term that closely track the definition provided in BCRA. Proposed Reg. § 100.24. As we have asserted in the Party litigation, this standard is vague and overbroad. It incorporates "campaign activity" such as voter identification in exclusively non-Federal contexts such as ballot measure campaigns, or phone banks calling voters and requesting they vote for local and state level candidates. This is an absurd result, and we ask the Commission to consider an exemption for such activities.

The rule would also be improved with the use of a *de minimis* standard so that informal and occasional GOTV and grassroots activities do not invoke the full force of federal regulations. We suggest that a $5,000 expenditure level such as that used elsewhere in the Act may be appropriate.

D. "Public Communication"

The Commission seeks comment on whether electronic mail, web casts, and web site communications should be included in the definition of "public communication." Proposed Reg. § 100.26. The Party urges the Commission to exclude these activities. The BCRA's ostensible purpose is to thwart the abuse of party committees as financial conduits in federal elections, although as the Party has asserted in the Party litigation, the clear impact of the BCRA would dismantle the party structure and cripple party committees, giving rise to an inference that BCRA actually has such an unstated, illegitimate purpose. However, since these electronic mail and web activities cost very little, and are very useful to parties in their communications with

members and interested public at large, we cannot understand why Congress would seek to impose strangling restrictions upon them.

Alternatively, the Commission could consider a *de minimis* expenditure under which any of the methods of communication in Section 100.26 would not fall within the definition of "public communication". We suggest $1,000.

Moreover, we ask the Commission to clarify in its rules that "public communications" are to the "public at large" and accordingly, party communications to registered party members are never "public communications."

E. "Agent"

The Commission has asked whether the term "agent" should be defined according to common law, or whether a definition should be provided in regulation, such as used in Section 109 of the current regulations. Proposed Reg. § 300.2(b). We believe it would be clearer for the regulated community if the Commission adopted a consistent regulatory standard.

We also strongly suggest that the regulations make clear that officers and agents of the Party are only considered agents or officers of the party here to the extent they are performing tasks under the explicit instruction or direction of the party. That is, if the CRP's second vice chairman (a volunteer official) also works personally and voluntarily on behalf of other candidates and committees, on his or her own and without direction from the Party, party organization restrictions should not apply to restrict or prohibit such activities.

F. "Directly or indirectly establish, finance, maintain or control"

The Commission seeks comment on its definition of this term. Proposed Reg. § 300.2(c). We believe that it would make the most sense for the Commission to use the existing definition in its affiliation regulations. *See* 11 C.F.R. § 100.5(g)(4).

Should the Commission feel moved to craft a new standard, despite the confusion it will create, we urge that the Commission not apply any new standard retroactively (para. (c)(1)(ii)). Moreover, the term "any funding" should be stricken from this same paragraph to make it consistent with our other recommendations.

We suggest that in paragraph (c)(1)(iii) the Commission add a *de minimis* funding level such as $5,000, in addition to the multifactor analysis included in the draft to determine "financing". The term "at any time" should be replaced by a temporal limit (we suggest the election year) so as not to impose undue limits on bona fide separate groups. Similarly we suggest a *de minimis* exception be included in paragraph (c)(1)(iv) for the term "maintaining" as applied to maintaining a group, and suggest $1,000 per year in monetary or in kind support, valued at the usual and normal charge in the marketplace for the services provided.

G. "Levin Funds" and "Levin Accounts"

As we stated before, we urge the Commission to adopt a different name for these funds. Proposed Reg. § 300.2(h) & (i). In addition, we ask that party committees be permitted to choose whether to establish a separate bank account for these restricted funds, or demonstrate through reasonable accounting methods that its funds for these restricted activities were raised under the applicable limits. *See, e.g.*, 11 CFR 102.5(b)(ii). Some large committees in states where state law does not impede establishing a separate account may want to do so, but for small committees with less activity it may be more sensible to provide an accounting option. Party committees vary immensely in size and sophistication, and the Commission would do well to recognize this in its regulations.

H. "To solicit or direct"

The Commission has asked for guidance on the draft definition of the phrase "to solicit or direct". Proposed Reg. § 300.2(m). The Commission has already broadly construed the term "solicitation", and while we do not express an opinion on whether the breadth of that existing interpretation is appropriate, we note that it would be simpler for the regulated community if a consistent interpretation were adopted here.

Regarding the scope and meaning of the verb "direct," we emphatically believe that the "passive providing of information" is not "directing" a contribution. Such a broad construction could prohibit distributing a wide variety of documents that virtually no one would consider election related materials, such as national Party directories of state and local committees and candidates.

II. Subpart B: State and Local Parties

We reiterate our caution at the outset that our comments in this context shall in no way modify the arguments we make in the Party litigation

regarding the legality of the BCRA. For present purposes, we must assume that BCRA can be enforced as written. Our comments on Subpart B are thus limited and do not iterate the arguments we might make about the constitutionality of many provisions in Subpart B.

A. Fundraising Expenses for Levin Accounts

The Commission has interpreted Section 441i(c) to require that a political party committee must spend Federal funds to raise "Levin" funds. BCRA in fact requires that payment for "Levin" fundraising costs "shall be made from funds subject to the limitations, prohibitions, and reporting requirements of this Act." BCRA § 323(c). A plain reading of this phrase would interpret "this Act" to mean *the entire* Act including Section 323(b). Accordingly, in our view, BCRA itself clearly provides that Federal or "Levin" funds may be used to raise "Levin" funds.

We also find the discussion of solicitation language and disclaimers in the proposed draft a bit baffling. Proposed Reg. § 300.30(b). We read BCRA to set criteria for "Levin" funds, but we do not see any matters related to fundraising process or donor notification. We believe it is inappropriate and unnecessary to enact a new set of disclaimer requirements for "Levin" fundraising.

B. Status of "Exempt Activities" and Federal/Nonfederal Allocation

The Commission's draft raises the issue of how party "exempt activities" (which under existing law are not limited by federal law but are reported) and general overhead and administrative expenses shall be funded in light of BCRA. While the apparent intent of BCRA was to provide a comprehensive statute to regulate non-Federal political party activity, a matter the Party has vigorously challenged in the Party litigation, we note that previously, federal regulations recognized a non-Federal element to party activity and developed allocation formulas to accommodate parties' dual federal/non-Federal roles. Now, BCRA has imposed a thorough top-down regulatory structure for parties. Therefore, there should be no need for allocation post-BCRA.

The Commission should assume that it was the intent of BCRA to enumerate the party activity requiring federal finance regulation. Activity not so enumerated should therefore be funding entirely under state law, i.e. with non-Federal funds raised under state law. For example, voter registration outside the 120-day "Levin" period would be funded with non-Federal funds under this interpretation. The notion that such registration

activities would require "hard dollar" funding is unsupported by the Act, by BCRA or common sense.

However, should the Commission determine that BCRA's silence on some funding matters permits the Commission's prior interpretations to stand, then we view with interest the Commission's suggestion that fixed allocation formulae be established. We believe that fixed national ratios could be welcome by some committees, but that others may prefer to calculate a state ballot composition ratio. Not all states – nor all committees – are the same, and we ask the Commission to adopt a standard that permits party committees the discretion to choose either the national ratio or their ballot composition ratio.

Parties should also be given the flexibility to adopt reasonable methods for documenting staff time to demonstrate that staff are being compensated correctly. The Commission should not try to develop a scheme applicable to all committees, such as mandating time logs.

III. Building Funds

The technical amendments to BCRA permit state or local parties to use additional state-regulated funds for construction or purchase of an office building. The draft regulations impose a more restrictive interpretation on the term "office building" than the Commission's historic reading of the term "office facility". Proposed Reg.§300.35. This introduces unnecessary confusion into the rulemaking process. We urge the Commission to continue to interpret the exception using principles from the Internal Revenue Code, such that capital expenditures would be allowed from the building fund (subject to state law) and ongoing expenses would not. We note that the draft continues to depend upon the Internal Revenue Code for other definitions. The Commission should apply this approach consistently throughout this section of the proposed regulations.

IV. Fundraising for Tax Exempt Organizations

The Commission requests comment on proposed Section 300.37, which prohibits state and local party committees from fundraising for or donating to organizations that are tax-exempt under Section 501(c) or Section 527, except for political committees, state, district, or local political party committees, or candidates for state and local office.

We believe it was the intent of the BCRA to prevent using party committees as conduits for the funding of so-called stealth PACs. However, Congress may not have understood the inconsistencies between the Internal

Revenue Code's approach to the taxation of political groups, and FECA's regulation of such groups' activities, or the complex nature of non-federal, including non-candidate related activities permitted under state and local law. The proposed regulation unfortunately echoes this confusion. The Commission should instead craft a regulation that exempts "federal, state or local political committees" (which may -- depending upon the situation -- be tax exempt under Internal Revenue Code Section 527 or 501(c)) from the prohibition in Section 300.37(a). Otherwise, the rules will prevent a state party committee from contributing in-kind to a state PAC, ballot measure committee, recall committee, or other political entities that are creatures of state campaign finance law but also organized under Section 501(c) of the Internal Revenue Code, when the party committee communicates to its members, urging the passage or defeat of a state or local ballot measure, or to urge the passage or defeat of a recall.

We respectfully submit these comments to the Commission, and look forward to working with Commission staff on this matter. Please do not hesitate to contact us with any questions you may have.

Very truly yours,

Charles H. Bell, Jr.
General Counsel
California Republican Party

Allison R. Hayward
Assistant General Counsel
California Republican Party

CHB:ARH:sa
Enclosure

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CALIFORNIA DEMOCRATIC PARTY
1401 21st Street, Suite 100
Sacramento, CA 95814;

ART TORRES
1401 21st Street, Suite 100
Sacramento, CA 95814;

YOLO COUNTY DEMOCRATIC CENTRAL COMMITTEE
2409 Halsey Circle
Davis, CA 95616;

Case No. 02-

CALIFORNIA REPUBLICAN PARTY
1903 West Magnolia Boulevard
Burbank, CA 91506;

SHAWN STEEL
27520 Hawthorne Blvd #270
Palos Verdes, CA 90274;

TIMOTHY J. MORGAN
121 Jewell Street
Santa Cruz, CA 95060;

BARBARA ALBY
120 Egloff Circle
Folsom, CA 95360;

SANTA CRUZ COUNTY REPUBLICAN CENTRAL COMMITTEE
352 Spyglass Way
Aptos CA 95003

DOUGLAS R. BOYD, SR.
7665 N. Ben Lomond Avenue
Glendora CA 91741

Plaintiffs,

v.

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

U.S. DEPARTMENT OF JUSTICE,
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs bring this action for declaratory and injunctive relief, and allege as follows:

INTRODUCTION

1. This action is brought to challenge the constitutionality of several provisions of the recently enacted Bipartisan Campaign Reform Act of 2002 ("BCRA"). The BCRA significantly amends the Federal Election Campaign Act of 1971 ("FECA") in ways that affect the fundamental ability of political parties in the United States and their members to participate in the political process.

2. One of the more egregious changes wrought by the BCRA is the attempt to impose a federal regulatory regime upon all political parties, from the national parties down to the local subunits of each state political party. The BCRA, by defining "Federal election activity" as virtually any political party activity that takes place in an election cycle in which a federal office is on the ballot, brings within its sweep the vast majority of state and local political activity. It all but eliminates the concept of "non-federal" election activity and subjects state and local political parties to federally determined contribution limits for activities that are not designed to have, and are not likely to have, any discernible effect on the election of federal candidates.

3. The BCRA limits state and local parties in the extent to which they can engage in the most basic forms of associational activity – voter registration, get-out-the-vote activities,

generic party communications, and promotion of the parties' ideological views. In doing so, it burdens the political parties in the performance of their core functions; namely, distributing their political message, shaping the course of public debate, and electing their representatives to public office.

4. This greatly expanded coverage significantly diminishes the role of political parties in the political process. It reflects a rejection of the parties' legitimate and historical role in elections – one long supported by the courts. The BCRA, not merely content to restrict the parties' participation in direct candidate support, also restricts the parties' ability to communicate their views to the public on controversial issues, or even as to the merits of the parties themselves. It goes so far as to prohibit the parties from supporting organizations that share their ideological views on issues completely unrelated to a particular federal candidate.

5. Plaintiffs CALIFORNIA DEMOCRATIC PARTY and CALIFORNIA REPUBLICAN PARTY were petitioners in *California Democratic Party, California Republican Party, et al. v. Jones*, 530 U.S. 567 (2000), in which the United States Supreme Court struck down the California "blanket primary" system that unconstitutionally prohibited the members of California's ballot-qualified political parties from selecting their parties' nominees and diluted the political parties' messages on issues and principles. Plaintiffs now join together to challenge the provisions of the BCRA which fundamentally interfere with and encroach upon provisions of California law that were enacted to foster the role of political parties in supporting those nominees for non-federal offices, and to advance issues and principles common to the political parties, their candidates and the electorate. Plaintiffs also join together to challenge those provisions of the BCRA that criminalize non-federal fundraising activities conducted by the political parties' standard-bearers, and which prohibit and criminalize plaintiffs' elected state party leaders who also serve as "officers" or "agents" of the national committees of their political parties from engaging in fundraising and spending activities to fund non-federal activities in support of

candidates, ballot issues and issues of local, state and federal importance. Under the BCRA, meetings of the plaintiffs' governing bodies that involve non-federal fundraising may subject the participants in those meetings to potential criminal prosecution. The BCRA also severs the connection between the state and local party committees and the national party committees for fundraising and election activity, but affiliates these same entities to prevent the plaintiffs from making "independent expenditures" when any other party unit has made "coordinated expenditures" on behalf of a party's nominee for a federal office, even when there is no control over that unit's expenditure decisions. These restrictions strike at the very heart of the core political activities of the political parties, and fundamentally infringe on their protected, constitutional speech and associational rights under the United States Constitution.

6. Ultimately, it is clear that the BCRA will weaken the very structure of the parties. By prohibiting joint fundraising activities, by prohibiting the involvement of national party officers, federal candidates and federal officeholders in those activities, and by prohibiting the parties from transferring funds between party units in a way that reflects their collective priorities, the BCRA attempts to destroy a cohesive and internally efficient party structure, to isolate each party unit from the others and, as a result, to reduce the effectiveness of the parties in the political process as a collective voice for their members. In addition, the BCRA directly seeks to limit and chill the lawful speech and associational activities of the parties, their officers and their representatives -- candidates -- by regulating conduct with vague and overbroad standards, enforced by the threat of intrusive enforcement investigations and, ultimately, criminal sanctions.

7. The policies reflected in the BCRA stand in stark contrast to the policies of the people of the State of California, as reflected in their own campaign finance laws recently adopted by popular referendum. Proposition 34, enacted in November, 2000, and approved by nearly 6 million California voters, included a specific finding and declaration that "[p]olitical parties play an important role in the American political process and help insulate candidates from the potential

corrupting influence of large contributions."

8. To these ends, California law imposes limits on contributions to state candidates, and on contributions to political parties which are to be used only for candidate contributions or member communications that are coordinated with candidates. However, California law allows unlimited contributions to the political parties for purposes other than candidate contributions, such as ballot measures, independent expenditures, voter registration, generic get-out-the-vote activities and generic party activities, and administrative expenses, thus enhancing the role of the parties in the political process. By expanding the scope of the FECA to cover state and local activities already regulated, and specifically permitted, by the State of California, the BCRA impermissibly intrudes upon areas reserved to the State under the Tenth Amendment to the United States Constitution.

JURISDICTION AND VENUE

9. By this action, plaintiffs seek to protect rights guaranteed by the First, Fifth, Tenth and Fourteenth Amendments of the United States Constitution. This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 2201. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) and section 403 of the BCRA.

PARTIES

10. Plaintiff CALIFORNIA DEMOCRATIC PARTY ("CDP") is the duly authorized and officially recognized Democratic Party of the State of California. It is a "State committee" within the meaning and for purposes of the FECA. (2 U.S.C. § 431(15).) Pursuant to the regulations of the Federal Election Commission ("FEC"), 11 C.F.R. § 102.5(a), CDP maintains a "federal account" into which are deposited only contributions meeting the limitations and prohibitions of the FECA ("federally permissible contributions"). CDP is a federal political committee registered with the FEC, and CDP files with the FEC regular public disclosure reports of all contributions to and expenditures from this account. CDP also maintains accounts into which

are deposited contributions meeting the limitations and prohibitions of California law ("non-federal contributions"). CDP is registered as a political committee in accordance with California law, Gov. Code § 84100 *et seq.*, and files regular reports of all its receipts and expenditures with the California Secretary of State. Its non-federal campaign activities are subject to direct regulation by the California Fair Political Practices Commission. CDP currently pays for activities affecting both federal and non-federal elections with funds drawn partly from its federal account, containing only federally permissible contributions, and partly from its account governed by state law (non-federal accounts), in accordance with regulations of the FEC, 11 C.F.R § 106.5.

11. CDP is an unincorporated association of almost seven million individuals who have joined together to advance common political beliefs. To advance those beliefs, CDP performs many functions, among them providing financial and material support to federal, state and local candidates, taking positions on public issues and publicizing those positions, including state and local ballot measures, and maintaining an administrative staff and administrative structure to make its other goals possible and to comply with extensive state and federal regulation. CDP also engages in voter registration and get-out-the-vote activity, participating in the registration of approximately 300,000 Democratic registrants in the past year, and encouraging and assisting its nearly seven million members to vote. CDP is financially supported by contributions from its members and other supporters. At its core, CDP is made up of persons who share certain political views and seek to join together to express those views through active participation in the political process. CDP brings this action on its own behalf and on behalf of its members.

12. Plaintiff ART TORRES is the elected Chairman of the CALIFORNIA DEMOCRATIC PARTY and a citizen of the State of California. He was elected as chairman by the party's convention comprised of approximately 2,700 state and local delegates, some of whom are elected state and federal officeholders, and nominees for state constitutional offices, state legislative offices, United States Senate and United States House of Representatives. Plaintiff

TORRES also serves on and chairs the Executive Committee of CDP. By virtue of his position as chairman of CDP, plaintiff TORRES is also a member of the Democratic National Committee, a national political party under BCRA and the Federal Election Campaign Act. Plaintiff TORRES is a member of the Executive Committee of the Democratic National Committee. To the extent that Plaintiff TORRES is a national party "officer" or an "agent" of a national political party, he is prohibited by the BCRA from raising or soliciting contributions for CDP to support purely state campaign activities of CDP, even if those contributions are lawful under California law, unless such contributions also meet all the restrictions, prohibitions and requirements of federal law.

13. Plaintiff YOLO COUNTY DEMOCRATIC CENTRAL COMMITTEE is a local party committee that is currently registered with the California Secretary of State as a political committee under California law. (Elec. Code §§ 7401-7470; Gov. Code §§ 82013(a).) Plaintiff is not registered as a federal "political committee" at present because it has not engaged in a sufficient amount of federal campaign activity to be treated as a federal "political committee" pursuant to the FECA, 2 U.S.C. § 431(4)(C) (local committee is political committee only if it receives contributions over $5,000 in connection with a federal election during a calendar year; makes a contribution or expenditure on behalf of specific federal candidates in excess of $1,000 during a calendar year; or makes expenditures for certain volunteer activities specifically on behalf of federal candidates in excess of $5,000 during a calendar year). Plaintiff YOLO COUNTY DEMOCRATIC CENTRAL COMMITTEE is a small local party committee, operated by volunteers, and does not maintain a year-round campaign headquarters. However, under the BCRA Plaintiff YOLO COUNTY DEMOCRATIC CENTRAL COMMITTEE would be required to register with and file reports with the FEC as a political committee if it disburses any money at all for voter registration or get-out-the-vote activity, even if no federal candidate is mentioned or promoted.

14. Plaintiff CALIFORNIA REPUBLICAN PARTY ("CRP") is the duly authorized

and officially recognized Republican Party of the State of California. It is a "State committee" within the meaning and for purposes of the FECA. (2 U.S.C. § 431(15).) Pursuant to the regulations of the Federal Election Commission ("FEC"), 11 C.F.R. § 102.5(a), CRP maintains a "federal account" into which are deposited only contributions meeting the limitations and prohibitions of the FECA ("federally permissible contributions"). This account is a federal political committee registered with the FEC, and CRP files with the FEC regular public disclosure reports of all contributions to and expenditures from this account. CRP also maintains accounts into which are deposited contributions meeting the limitations and prohibitions of California law ("non-federal contributions"). CRP is registered as a political committee in accordance with California law, Gov. Code § 84100 *et seq.*, and files regular reports of all its receipts and expenditures with the California Secretary of State. Its non-federal campaign activities are subject to direct regulation by the California Fair Political Practices Commission. CRP currently pays for activities affecting both federal and non-federal elections with funds drawn partly from its federal account, containing only federally permissible contributions, and partly from its account governed by state law (non-federal accounts), in accordance with regulations of the FEC, 11 C.F.R. § 106.5.

15. CRP is an unincorporated association of more than five million individuals who have joined together to advance common political beliefs. To advance those beliefs, CRP performs many functions, among them providing financial and material support to federal, state and local candidates, taking positions and publicizing those positions on public issues, including state and local ballot measures, and maintaining an administrative staff and administrative structure to make its other goals possible and to comply with extensive State and Federal regulation. CRP also engages in extensive voter registration and get-out-the-vote activity, registering over 200,000 Republican registrants to vote in the past year, and encouraging and assisting its over five million members to vote. CRP is financially supported by contributions from its members and other supporters. At its core, CRP is made up of persons who share certain political views and seek to

join together to express those views through active participation in the political process. CRP brings this action on its own behalf and on behalf of its members.

16. Plaintiff SHAWN STEEL is the elected Chairman of the CALIFORNIA REPUBLICAN PARTY and a citizen of the State of California. He was elected as chairman by the CRP State Central Committee, which is made up of over 1,500 members, including elected state and federal officeholders, and nominees for state constitutional offices, state legislative offices, United States Senate and United States House of Representatives. He also serves as a member and chair of CRP's Board of Directors and Executive Committee. Plaintiff STEEL is also a member of the Republican National Committee, a national political party under BCRA and the Federal Election Campaign Act. Plaintiff STEEL is a member of the Executive Committee of the Republican National Committee. To the extent that Plaintiff STEEL is a national party "officer" or an "agent" of a national political party, he is prohibited by the BCRA from engaging in fundraising activity of CRP to raise non-federal contributions for the support of purely state campaign activities of CRP.

17. Plaintiff TIMOTHY J. MORGAN is an elected National Committeeman of the CALIFORNIA REPUBLICAN PARTY and a citizen of the State of California. He was elected by the CRP's state central committee composed of more than 1,500 members, including elected state and federal officeholders, and nominees for state constitutional offices, state legislative offices, United States Senate and United States House of Representatives. He is also a member of CRP's Board of Directors and Executive Committee, and serves as chair of the CRP Rules Committee. Plaintiff MORGAN is also a member of the Republican National Committee, a national political party under BCRA and the Federal Election Campaign Act, and is a member of the RNC Budget Committee. To the extent that Plaintiff MORGAN is a national party "officer" or an "agent" of a national political party, he is prohibited by BCRA from engaging in fundraising activity of CRP to raise non-federal contributions for the support of purely state campaign activities of the CRP.

18. Plaintiff BARBARA ALBY is an elected National Committeeman of the CALIFORNIA REPUBLICAN PARTY and a citizen of the State of California. She was elected by the CRP's state central committee composed of more than 1,500 members, including elected state and federal officeholders, and nominees for state constitutional offices, state legislative offices, United States Senate and United States House of Representatives. She is a member of the CRP Board of Directors and Executive Committee. Plaintiff ALBY is also a member of the Republican National Committee, a national political party under BCRA and the Federal Election Campaign Act, and is a member of the RNC Convention Arrangements Committee. To the extent that Plaintiff ALBY is a national party "officer" or an "agent" of a national political party, she is prohibited by BCRA from engaging in fundraising activity of CRP to raise non-federal contributions for the support of purely state campaign activities of CRP.

19. Plaintiff SANTA CRUZ COUNTY REPUBLICAN CENTRAL COMMITTEE is a local party committee that is currently registered with the California Secretary of State as a political committee under California law. (Elec. Code §§ 7401-7470; Gov. Code §§ 82013(a).) Plaintiff is not registered as a federal "political committee" at present because it has not engaged in a sufficient amount of federal campaign activity to be treated as a federal "political committee" pursuant to the FECA, 2 U.S.C. § 431(4)(C) (local committee is political committee only if it receives contributions over $5,000 in connection with a federal election during a calendar year; makes a contribution or expenditure on behalf of specific federal candidates in excess of $1,000 during a calendar year; or makes expenditures for certain volunteer activities specifically on behalf of federal candidates in excess of $5,000 during a calendar year). Plaintiff SANTA CRUZ REPUBLICAN CENTRAL COMMITTEE is a small local party committee, operated by volunteers, and does not maintain a campaign headquarters. However, under the BCRA Plaintiff SANTA CRUZ REPUBLICAN CENTRAL COMMITTEE would be required to register with and file reports with the FEC as a political committee if it disburses any money at all for voter

registration or get-out-the-vote activity, even if no federal candidate is mentioned or promoted.

20. Plaintiff DOUGLAS R. BOYD, SR., is the Treasurer of the CRP, and has served in that position since 2001. As Treasurer, he verifies and signs all CRP campaign disclosure reports filed with the Federal Election Commission, and is personally liable for any violations by the CRP of the FECA, as amended by the BCRA. See 11 C.F.R. § 104.14(d).

21. Defendant FEDERAL ELECTION COMMISSION ("FEC") is the government agency designated by the FECA to enforce the provisions of the FECA, including the challenged provisions of the BCRA. (2 U.S.C. § 437c(b).) The FEC has exclusive jurisdiction with respect to civil enforcement of FECA. (2 U.S.C. § 437c(b)(1).)

22. Defendant UNITED STATES DEPARTMENT OF JUSTICE (DOJ) is charged with prosecution of criminal violations of the laws of the United States, including those provisions of the FECA for which criminal sanctions may be imposed. (2 U.S.C. § 437g(d).) If the FEC determines that there is probable cause to believe that a knowing and willful violation of the FECA has occurred, the FEC may refer such apparent violation to the Attorney General of the United States. (2 U.S.C. § 437g(a)(5)(C).)

FACTUAL ALLEGATIONS

23. All political party committees in California, including CDP, CRP and county central committees are regulated by provisions of the California Elections Code and the California Government Code with respect to the electoral process and the regulation of campaign activities, including campaign finance and disclosure, at both the state and local level.

24. California law limits the amount of money that can be contributed to a state party to make contributions to candidates for state elective office, or member communications coordinated with those candidates, to $25,000 per person per calendar year. (Gov. Code § 85303.)

25. California law permits persons, including political action committees (PACs), corporations and unions, to make unlimited contributions to a state party for purposes other than

contributions to candidates for state elective office or member communications coordinated with those candidates. (Gov. Code § 85303.) Such purposes include, but are not limited to, support of or opposition to ballot measures, conducting voter identification, voter registration and get-out-the-vote (GOTV) activities not involving express advocacy on behalf of candidates, and the payment of fundraising and other administrative overhead expenses. Plaintiffs CDP and CRP have in the past received contributions for these activities in excess of the $10,000 limit imposed by federal law, and wish to receive such contributions in the future but are prohibited from accepting such contributions if they are used for voter registration, "generic campaign activities," or certain public communications.

26. Communications by a political party to its members are not limited by California law, and expenditures made for such communications are not considered contributions to candidates or expenditures of the candidates, even though such communications may include references to candidates for state elective office. (Gov. Code § 85312.)

27. Under California law, entities are only considered "affiliated" for purposes of the contribution limits and reporting if contributions of both entities are directed and controlled by the same individuals. (Gov. Code § 85311.)

28. In addition to state parties such as CDP and CRP, California law provides for county central committees (i.e., local party committees). (Elec. Code § 7200-7244 (Democratic Party); 7403-7470 (Republican Party).) Neither CDP nor CRP direct or control the contribution decisions of county central committees.

29. Both CDP and CRP regularly communicate with their own members, as well as the public at large, on a wide range of matters. Communications include generic party support and voter registration efforts, support of or opposition to candidates, and support of or opposition to state and local ballot measures, as well as other communications believed to further the ideological goals of each party. Communications include broadcast media, as well as print media

and telephone, public events, and internet communications. Although both parties intend to continue to engage in such communications, their ability to do so is significantly impaired by the provisions of the BCRA.

30. CDP and CRP have in the past and wish to continue to engage in public communications that may identify a federal candidate but which do not contain "express advocacy" on behalf of the identified Federal candidate as that term has been defined by the courts. These communications are prohibited under the BCRA unless paid for completely with Federally permissible contributions.

31. California and its local jurisdictions have adopted a policy that favors combining state and local elections with federal elections whenever possible in order to maximize voter interest and turnout, and to achieve cost-savings. Any election (other than a special election) that includes a federal office on the ballot is normally accompanied by a large number of state and local offices as well. During the 2001/2002 election cycle, California voters will only be voting for one federal office -- their member of Congress. On the other hand, there will be nine statewide officers on the ballot. Voters will also be voting on one, and possibly two, state legislative offices. The number of state ballot measures varies with each election. In March, 2002 there were six statewide ballot measures, and there are sure to be more in November, 2002. Two have already qualified, and another 27 are in circulation. In addition to all of these state officers and measures, each local jurisdiction considers its own host of candidates and local ballot measures.

32. California voters routinely consider a large number of ballot measures, both state and local, in connection with elections that may also include federal candidates. Both CDP and CRP have in the past and wish to continue to take positions on ballot measures, make contributions in support of or opposed to such measures, and publicize their support or opposition through public broadcasts and other communications media. Ballot measure committees are usually

organized as 501(c) nonprofit organizations.

33. In addition to making direct contributions to candidates, CDP and CRP have in the past and wish to continue to engage in both coordinated expenditures (considered "in-kind" contributions) with federal candidates and to make independent expenditures in support of or opposition to federal candidates.

34. Both CDP and CRP maintain extensive administrative staffs, in both election years and non-election years, and incur substantial administrative expenses, including rent, utilities, printing costs, supplies, legal and accounting services, and salaries and benefits such as health insurance. These expenses are required, in part, by the parties' significant non-candidate functions including, but not limited to, non-candidate advocacy, compliance with state and federal regulatory activities, party support services, ongoing meetings and internal party communications, fundraising, response to press inquiries, and dissemination of the parties' political views.

35. Although the governance structures of the parties are somewhat different, both CDP and CRP are involved in selecting California representatives to their national party committees. Members of the national party committees also play a role in each of the state parties.

36. Both CDP and CRP engage in extensive fundraising activities. These fundraising efforts routinely include federal, state and local candidates, officeholders and party officials or employees. Fundraising efforts are occasionally done jointly with local party committees, and each state party routinely provides materials and resources to local committees to assist in their fundraising efforts and compliance responsibilities.

37. CDP and CRP have in the past and wish to continue to make contributions to 501(c) nonprofit organizations (such as ballot measure committees) where the parties' ideological goals are consistent with those of the nonprofit organization and to 527 organizations (such as state-registered PAC's) where the organization is engaged in activities which are consistent with the parties' goals.

38. Both CDP and CRP have in the past and wish to continue to support candidates for federal and state office through a cooperative "party ticket" campaign which is designed to allow state party officials and staff to work collaboratively with state officeholders, federal officeholders, national party officials and staff, and other significant "constituency" groups to coordinate campaign activities in the state to maximize the effectiveness of available party resources. Much of the "party ticket" campaign focuses on "traditional" party associational activity such as voter registration, literature distribution, volunteer phone banks, and slate mail featuring the parties' candidates and issues. The ability to conduct such a "party ticket" campaign would be significantly adversely affected by the provisions of the BCRA that prohibit federal candidates or officeholders from involvement in raising, directing or spending contributions that are lawful under state and federal law.

39. Plaintiffs TORRES and STEEL are the elected chairmen of the CDP and CRP, respectively. Each of them is also a member of the Executive Committee of the Democratic National Committee and the Republican National Committee, respectively. Plaintiffs MORGAN and ALBY are elected members of the Republican National Committee. They also serve on the Executive Committee and Board of Directors of CRP. To the extent that any of these plaintiffs is a national party "officer" or an "agent" of a national political party under the terms of the BCRA, he or she is prohibited from engaging in fundraising activity for either CDP or CRP to raise non-federal contributions for the support of purely state campaign activities of those organizations.

40. Plaintiffs county central committees have not engaged in a level of federal election activity that required them to register as "political committees" with the FEC. Their primary activities are support of state and local candidates, voter registration, get-out-the-vote activity and other generic activity to promote each of the parties. Under the BCRA, if these parties continue their voter registration and get-out-the-vote activities, they will be required to register and file periodic reports with the FEC, even if no federal candidate is mentioned or promoted. The

responsibility and cost of complying will be excessively burdensome to these committees. Since the penalties for noncompliance are severe, these disclosure requirements are likely to have the effect of limiting the associational activities of the local party plaintiffs.

41. Proposition 34, enacted by nearly 6 million California voters in November, 2000, crafted a new combination of contribution limits and voluntary expenditure limits, while preserving the rights of the political parties and other organizations to fully participate in the political process. Proposition 34 included a specific finding and declaration that "[p]olitical parties play an important role in the American political process and help insulate candidates from the potential corrupting influence of large contributions." The BCRA attempts to eliminate the very participation by political parties that Proposition 34 sought to preserve and enhance.

42. California has approximately 21 million eligible voters. Because of the size of the voting population and California's large and diverse geographical area, communication with party members, or with the public at large (potential party members), is extremely expensive. Despite the significant efforts of the political parties, over 6 million eligible voters remain unregistered. By imposing federal restrictions on CDP and CRP's fundraising activities and imposing contribution and spending limits on non-federal activities, the BCRA will significantly and unconstitutionally limit the parties' abilities to communicate their views to their members and to the public, and to advance the collective principles and goals of their membership in the context of particular candidates and issues.

COUNT I

(Restrictions On Non-Federal Activities)

43. Plaintiffs re-allege and incorporate by reference all the allegations contained in the preceding paragraphs.

44. Section 101(a) the BCRA adds a new section 323 to the FECA. The new section 323(b) requires that any amount expended or disbursed for "Federal election activity" made by

state, district or local party committees must be made only from funds subject to the limitations, prohibitions, and reporting requirements of the BCRA ("federally permissible contributions").

45. "Federal election activity" is a new term to be added to section 301 of the FECA. This new term includes any voter registration activity in the 120 days before an election in which a federal candidate is on the ballot; any voter identification, get-out-the-vote, or generic campaign activity in connection with such an election, any public communication that "promotes," "supports," "attacks," or "opposes" a candidate for federal office, and the salaries of any employees spending 25% of their time in a given month on "activities in connection with a Federal election." "Federal election activity" is now defined so broadly that it will unavoidably include most of the political activities of state and local political parties and impermissibly impose a new federal regulatory regime on the activities of those parties.

46. New section 323(b)(2) of FECA, as added by section 101 of BCRA, contains the so-called Levin Amendment. Under the Levin Amendment, state and local parties may pay for certain "Federal election activity" in part with a new type of federally limited contributions. That new category of contributions ("Levin Amendment contributions") is to consist of contributions from any source allowed under applicable state law, but not to exceed $10,000 per donor per calendar year (the amount of federally permissible contributions). The result is that state and local party activities that were previously apportioned between federally permissible contributions and state-regulated contributions must now be completely paid with federally permissible contributions and the federally limited "Levin Amendment" contributions.

47. The percentage of the costs of allowable activity that can be paid with "Levin Amendment" money is to be established by the FEC.

48. The allowable activities that can be paid, in part, with "Levin Amendment contributions" do not include any form of broadcast communication, television, cable, radio or satellite. These types of communications, even those supporting voter registration or urging the

importance of voting, are prohibited unless funded exclusively with federally permissible contributions. Also, "Levin Amendment" contributions may not be used to pay for any activity that refers to a federal candidate.

49. In addition to the $10,000 limit, new sections 323(b)(2)(B) & (C) of FECA, as added by section 101(a) of BCRA, severely restrict the ways in which "Levin Amendment" contributions can be raised. Such contributions cannot be solicited, received, directed, transferred or spent by or in the name of any federal officeholder or federal candidate; any national party committee officer or agent; cannot be provided by any other state or local party committee other than the committee receiving the funds, or any officer or agent of any such other state or local party committee; and cannot be solicited, received or directed through fundraising activities of two or more state or local party committees acting jointly.

50. To the extent that "Federal election activity" now includes any voter registration activity within 120 days of an election in which a Federal candidate is on the ballot, this voter registration activity is prohibited unless funded completely by federally permissible contributions and, provided the activity is not a "broadcast communication," federally limited "Levin Amendment" contributions. This means that voter registration activity must now be funded with completely federally regulated contributions, even if it does not mention any candidate, federal or non-federal.

51. To the extent that "Federal election activity" now includes any identification of potential voters, get-out-the-vote activity or any generic party communication (i.e., one that promotes a party but does not promote any candidate) conducted in connection with an election in which a federal candidate appears on the ballot, these activities are prohibited unless funded completely by federally permissible contributions and, provided the activity is not a "broadcast communication," federally limited "Levin Amendment" contributions. This includes get-out-the-vote or generic party campaign activities that do not mention any candidate, federal or non-federal.

52. To the extent that "Federal election activity" now includes any public communication, including broadcasts, mass mailings and phone banks, that refer to a 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 that candidate is on the ballot in the next election, those communications are now prohibited unless funded completely by federally permissible contributions. There are no exceptions for the use of "Levin Amendment" contributions.

53. To the extent that "Federal election activity" now includes the salaries of any party employees who spend more than 25% of their time in a given month on activities "in connection with" an election in which a federal candidate appears, these salaries must be funded completely with federally permissible contributions regardless of the nature of the employee's activities or the number of non-federal candidates or issues to be considered at that election. There are no exceptions for the use of "Levin Amendment" contributions.

54. The BCRA definition of "Federal election activity" includes much state party activity that is not subject to federal regulation in connection with federal elections or that is protected speech, i.e., local voter registration and generic party communications, including a party's communications with its own members, urging them to vote, that do not mention federal candidates; and party communications about the record or positions of incumbent officeholders (whether or not they are actually on the ballot) or the record or positions of challengers. In fact, if a federal candidate is on the ballot, virtually any party activity at the state or local level which is designed to encourage voters to turn out to vote or to support the party's candidates and issues in any context, is now defined as "Federal election activity" regardless of whether any federal candidate is mentioned, referenced, promoted or benefitted in any way by the disbursement of funds for such activity. Merely encouraging the public to "vote" has been converted into "Federal election activity" subject to federal restrictions on funding.

55. Under the plain language of new FECA section 301(20)(A) and (B), defining "Federal election activity," state or local party activity to encourage California voters to vote or to support state or local candidates and issues is prohibited unless funded completely by some combination of federally limited contributions, even though the number of state and local contests vastly outweigh the number of federal races.

56. Under the BCRA, "Federal election activity" will include a party's public broadcast communications in support of or opposition to ballot measures, even if those communications do not refer to any candidate, federal or non-federal. To the extent that these communications include a "get-out-the-vote" or "generic campaign" message, they are prohibited unless funded completely with Federally permissible contributions.

57. The definition of "Federal election activity" contained in the BCRA includes any public communication that "promotes or supports a candidate...or attacks or opposes a candidate" (new FECA section 301(20)(A)(iii)) and it incorporates a definition of "generic campaign activity" (new FECA section 301(21)) as "campaign activity that promotes a political party" and does not promote a candidate. These definitions are, separately and collectively, unconstitutionally vague and overbroad in violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

58. Under FECA section 309(d)(1), 2 U.S.C. §437g(d)(1)(A), as amended by section 312 of BCRA, the making, receiving, or reporting of any contribution or expenditure in violation of the FECA, as amended by BCRA, involving more than $25,000 in any one calendar year, even for activities described in paragraphs 45 through 56 above, is a felony punishable by up to 5 years imprisonment.

59. By restricting, under the threat of severe criminal penalties, the funding of core political speech and directly restricting the amount of speech in which party committees may engage, including limitations on communications with their own members and communications on

non-candidate issues, and including activities which do not constitute monetary or in-kind contributions to any federal candidate, new section 323(b) of the FECA as added by BCRA section 101(a) violates the plaintiff state and local party committees' rights of free speech and free association, as well as the rights of the parties' members, protected by the First Amendment to the U.S. Constitution.

60. By regulating the ways in which state and local political parties may raise and spend funds and, specifically, by imposing federal limitations on activities which are state or local in nature and which are already regulated and specifically permitted by the state, new section 323(b) of the FECA as added by BCRA section 101(a) violates the Tenth Amendment to the U.S. Constitution.

61. By requiring political parties to fund non-federal election activities and communications with money subject to federal restrictions and imposing restrictions that are not placed on other similarly situated entities undertaking the identical communications with citizens and voters about candidates and issues, new section 323(b) of the FECA as added by BCRA section 101(a) violates the plaintiff state and local political party committees' rights of association and free speech guaranteed by the First Amendment to the U.S. Constitution and deprives the political party committees of the equal protection of the laws as guaranteed by the Fifth Amendment to the U.S. Constitution.

COUNT II

(Limits on Contributions For Non-Federal Activities)

62. Plaintiffs re-allege and incorporate by reference all of the allegations contained in the preceding paragraphs.

63. Section 101(a) prohibits any person from contributing more than $10,000 in "Levin Amendment" contributions in a calendar year to a party committee if that money will be used to pay any portion of the costs of certain party activities, including voter registration, voter

identification, get-out-the-vote and generic party communications. This limit is identical to the federal limit, although sources prohibited from contributing under federal law may contribute if permitted by state law. The limit on non-federal contributions applies even where the money is to be used for purely state or local election activity, non-candidate issue advocacy, ballot measure advocacy, or party fundraising and administrative expenses.

64. Because the $10,000 limit applies to contributions that may be used for non-candidate activities that "promote" a political party or that merely encourage voting, virtually all party speech is subject to the federal restrictions.

65. The BCRA regulates and restricts the funding of core political speech which is not candidate-related and cannot be justified by any legitimate governmental concern for political corruption. By restricting the amount of non-federal contributions that the parties may receive and setting the amount at a level which will not allow the parties to adequately communicate their message to voters or to perform their non-candidate functions, the $10,000 limit set forth in the "Levin Amendment," new section 323(b) of the FECA, as added by BCRA section 101(a), directly restricts the speech in which party committees may engage, and violates the parties' rights of free speech and free association under the First Amendment to the U.S. Constitution.

66. By regulating the ways in which state and local political parties may raise and spend funds and, specifically, by imposing federal limitations on activities which are state or local in nature and which are already regulated and permitted by the state, the $10,000 limit set forth in the "Levin Amendment," new section 323(b) of the FECA as added by BCRA section 101(a) violates the Tenth Amendment to the U.S. Constitution.

67. By requiring political parties to fund non-federal election activities with money subject to Federal restrictions and imposing restrictions that are not placed on other similarly situated entities, the $10,000 limit set forth in the "Levin Amendment," new section 323(b) of the FECA as added by BCRA section 101(a) violates the First Amendment of the U.S. Constitution

and deprives the parties of equal protection of the laws as guaranteed by the Fifth Amendment to the U.S. Constitution.

COUNT III

(Prohibitions On Sharing Expenses and Joint Fundraising)

68. Plaintiffs re-allege and incorporate by reference all the allegations contained in the preceding paragraphs.

69. New sections 323(b)(2)(iv) and (C) of the FECA, added by section 101(a) of the BCRA, requires that each state, district or local party raise its own "Levin Amendment" contributions and prohibits the transfer of such contributions between state, district or local party committees, or between the national party committee and any state or local party committee. It also prohibits state and local party committees from acting together to raise any "Levin amendment contributions."

70. The BCRA provides that a "Levin Amendment" contribution may not be used for "Federal election activity," including generic party promotion, if it is "solicited, received, directed, transferred, or spent by" any national party committee, including any officer or agent of such party or if it is "solicited, received or directed" through joint fundraising activities at the state and local level. Because much of the plaintiffs' associational activity involves discussions that touch on fundraising, campaign strategies, and spending priorities, the mere participation of national, state and local representatives of political parties in such meetings may subject participants to inquiries about their discussions and possible enforcement action, including criminal investigation and prosecution. To the extent that the prohibitions of the BCRA with respect to "directing" or "spending" money impermissibly limit legitimate associational activity, these provisions are unconstitutionally vague and overbroad in violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

71. By restricting, under the threat of severe criminal penalties, the rights of party committees to jointly raise "Levin Amendment" contributions, and by subjecting officers, staff and volunteers of state and local parties to possible criminal investigation and prosecution by virtue of their participation in party meetings as described in the foregoing paragraph, new sections 323(b)(2)(iv) and (C) of the FECA, added by section 101(a) of the BCRA, violates the parties' rights of free speech and association protected by the First Amendment to the U.S. Constitution.

72. By regulating the ways in which state, district and local political parties may raise and spend "Levin Amendment" contributions and, specifically, by imposing severe federal limitations on activities which are state or local in nature and which are already regulated and permitted by the state, new sections 323(b)(2)(iv) and (C) of the FECA, added by section 101(a) of the BCRA, violates the Tenth Amendment to the U.S. Constitution.

73. By imposing restrictions on the fundraising activities of the political parties for non-federal election activities and on funding non-federal election activities with contributions not subject to federal restrictions that are not placed on other similarly situated entities, new section 323(b)(2)(iv) and (C) of the FECA, as added by section 101(a) of the BCRA, violates the First Amendment and deprives the political parties of the equal protection of the laws guaranteed by the Fifth Amendment to the U.S. Constitution.

COUNT IV

(Restriction of Transfers of Hard Money from National to State Party Committees)

74. Plaintiffs re-allege and incorporate by reference all the allegations contained in the preceding paragraphs.

75. Under the "Levin Amendment," state and local party committees may use "Levin Amendment" contributions to pay for a portion of the costs of some voter registration activities, some generic communications promoting the party without mentioning a federal candidate, and some get-out-the-vote activities.

76. The remaining portion of such costs must be paid for with contributions subject to the limitations and prohibitions of FECA, i.e., federally permissible contributions.

77. Under FECA section 323(b)(2)(B), as added by BCRA section 101(a), a state or local party may not pay for any portion of such activities with federally permissible contributions transferred, contributed or provided by any national party committee or any other state or local party committee. In other words, the BCRA prohibits the transfer between political party units even of those funds that have been raised subject to all applicable federal limitations and restrictions.

78. The total amount of contributions that an individual may contribute to all national, state and local party committees, and other non-candidate political committees, put together in any 2-year election cycle is $57,500, under FECA, 2 U.S.C. §441a(a)(3), as amended by BCRA section 307(a).

79. Section 323(b)(2)(B) of FECA as added by BCRA section 101(a), insofar as it restricts transfers of federally permissible contributions between and among national, state and local party committees, without any justifying governmental interest whatsoever, violates the plaintiff state and local party committees' freedom of speech and association protected by the First Amendment to the U.S. Constitution.

COUNT V

(Prohibitions On Involvement of Federal Officers, Candidates, and National Party Officers and Agents in Party Activities)

80. Plaintiffs re-allege and incorporate by reference all the allegations contained in the preceding paragraphs.

81. New FECA section 323(a) prohibits any officer or agent acting on behalf of a national party committee from soliciting any contributions not subject to the limitations and prohibitions of the FECA. As described in paragraphs 12 and 16 above, plaintiffs TORRES and

STEEL are members of their respective national party executive committees (DNC and RNC) as well as chairs of their respective state party committees. As "officers" and, to the extent each is regarded as an "agent" of the national party committee, plaintiffs TORRES and STEEL are each prohibited by section 323(a) from raising contributions lawful under California law for their own state party committees to the extent that such contributions do not comply – and they would not – with the limitations and prohibitions of FECA.

82. New section 323(e)(1) of the FECA, as added by section 101(a) of the BCRA, prohibits any federal candidates or officeholders from any involvement in the process of spending non-federally permissible contributions, including contributions to state and local party committees' non-federal accounts that are lawful under both state law and under the FECA. The effect of this prohibition is to prevent federal candidates and office-holders from communicating and working with their state and local party committees with respect to the organization and conduct of political communications and voter contact activities. It also effectively precludes the State parties from working with federal officeholders or candidates to conduct a "party ticket" campaign to elect federal candidates.

83. New section 323(e)(1) of the FECA, as added by section 101(a) of the BCRA, provides that a federal candidate or office-holder may not "solicit, receive, direct, transfer, or spend [non-federal] funds." Although section 323(e)(3) allows federal candidates and office-holders to "attend, speak or be a featured guest at a fundraising event," the terms "solicit," "direct," and "fundraising event" are not defined by the BCRA. Because it is unclear which activities are barred by the general prohibition and which are within the exception, and because violations may subject the candidate or office-holder to criminal prosecution, federal candidates and officeholders are likely to avoid communications with state and local parties, thereby significantly diminishing and chilling the association of the parties with the federal officeholders and candidates who are their standard-bearers.

84. By restricting, under the threat of severe criminal penalties, the communications between the state and local parties and their representatives, by precluding the parties' own officers and candidates from raising lawful funds for the parties, and by precluding the parties' federal candidates and officeholders from having any role in a key function of the parties, including discussions relating to the spending of party funds on core political speech and on registering and turning out voters, new sections 323(a) and 323(e)(1) of the FECA, as added by section 101(a) of the BCRA, violate the state and local parties' rights and their officers' individual rights of free speech and free association protected by the First Amendment to the U.S. Constitution.

85. By regulating the ways in which state, district and local political parties may raise and spend funds and, specifically, by imposing Federal limitations on activities which are state or local in nature and which are already regulated and permitted by the state, new section 323(e)(1) of the FECA, as added by section 101(a) of the BCRA, violates the Tenth Amendment to the U.S. Constitution.

86. By prohibiting the officers, employees, candidates and officeholders of the political parties from full participation in party activities and by imposing restrictions on their communications and participation that are not placed on other similarly situated persons and entities, new section 323(e)(1) of the FECA, as added by section 101(a) of the BCRA, violates the plaintiff state and local political parties' rights and their officers' individual rights of free speech and association protected by the First Amendment and deprives them of the equal protection of the laws guaranteed by the Fifth Amendment to the U.S. Constitution.

COUNT VI

(Prohibition On Party Involvement With Other Advocacy Groups)

87. Plaintiffs re-allege and incorporate by reference all the allegations contained in the preceding paragraphs.

88. New section 323(d) of the FECA, as added by section 101(a) of the BCRA, prohibits state, district and local party committees, and their officers and agents, from soliciting funds for, or making or directing donations to, any organizations under section 501(c) of the Internal Revenue Code that have made expenditures for "Federal election activity," or any organizations under section 527 of the Internal Revenue Code. Because of the broad definition of "Federal election activity" under new FECA section 320(A), section 323(d) prohibits solicitations for or donations to many organizations that do not make expenditures in support of, or opposed to, federal candidates. Such activity includes support of or opposition to state or local candidates, support of or opposition to ballot measures, or even nonpartisan voter registration or get-out-the-vote activities.

89. The terms "solicit" and "direct" are not defined by the BCRA. Because it is unclear which activities are prohibited, state and local parties, and their representatives, are likely to avoid or limit lawful communications with the nonprofit organizations covered by section 101(a), thereby significantly diminishing and chilling the association of the parties with these organizations. The provisions are unconstitutionally vague and overbroad in violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

90. By regulating core political speech, burdening the ability of the parties to support other organizations that share their ideological goals, and restricting the nature of the speech in which party committees may engage, new section 323(d) of the FECA, as added by section 101(a) of the BCRA, violates the parties' rights of free speech and free association under the First Amendment.

91. By regulating the ways in which state, district and local political parties may raise and spend funds and, specifically, by imposing federal limitations on activities which are state or local in nature and which are already regulated and permitted by the state, new section 323(d) of

the FECA, as added by section 101(a) of the BCRA, violates the Tenth Amendment to the U.S. Constitution.

92. By imposing restrictions on party contributions and communications that are not placed on other similarly situated entities, new section 323(d) of the FECA, as added by section 101(a) of the BCRA, violates the First Amendment to the U.S. Constitution and deprives the political parties of the equal protection of the laws as guaranteed by the Fifth Amendment to the United States Constitution.

COUNT VII

(Restrictions On Party Expenditures)

93. Plaintiffs re-allege and incorporate by reference all the allegations contained in the preceding paragraphs.

94. New FECA section 315(d)(4), as added by section 213 of the BCRA, prohibits any political party committee from making an independent expenditure with respect to a candidate after it has made a coordinated expenditure or, conversely, from making a coordinated expenditure after it has made an independent expenditure. This prohibition is unaffected by the presence or absence of actual coordination in connection with a particular expenditure.

95. New FECA section 315(d)(4), as added by section 213 of the BCRA, also provides that all political party committees of a particular party, from the national committee to a state committee to a local committee are considered to be a "single committee" for purposes of this prohibition despite the fact that none of these entities may have any control over the contribution or expenditure decisions of the others. The result is that if one committee, at any level, makes a coordinated expenditure, all other party committees of that party are prohibited, under threat of severe criminal penalties, from making independent expenditures without regard to their actual involvement in the coordinated expenditure. In addition, if any state or local party makes an independent expenditure in support of a candidate, any other committee of that party –

national, state or local – that makes coordinated expenditures in support of the same candidate cannot transfer any funds to the party committee making the independent expenditure, even if those funds may be spent on activities unrelated to the making of an independent expenditure.

96. By impermissibly limiting and restricting, under threat of severe criminal penalties, the ability of political party committees to make independent expenditures advocating the election or defeat of a federal candidate, core political speech of the parties, new FECA section 315(d)(4), as added by section 213 of the BCRA, violates the plaintiff state and local party committees' rights of free speech and free association protected by the First Amendment.

97. By prohibiting political parties from engaging in both coordinated or independent expenditures and imposing restrictions that are not placed on other similarly situated entities, new section 315(d)(4), as added by section 213 of the BCRA, denies the plaintiff state and local party committees the equal protection of the laws guaranteed by the Fifth Amendment to the U.S. Constitution.

COUNT VIII

(Failure to Index Limitations on Contributions to State and Local Parties for Inflation)

98. Plaintiffs re-allege and incorporate by reference all the allegations contained in the preceding paragraphs.

99. Under FECA, 2 U.S.C. §441a(a)(1)(D), as amended by BCRA section 102, an individual may contribute no more than $10,000 per calendar year to a state committee of a political party.

100. Under FECA section 441a(a)(1)(C), an individual may contribute no more than $5,000 per calendar year to a local committee of a political party.

101. Under FECA, 2 U.S.C. §441a(a)(1)(B), as amended by BCRA section 307(b), an individual may contribute no more than $25,000 per calendar year to a national committee of a political party.

102. Under FECA, 2 U.S.C. §441(h), as amended by BCRA section 307(b), a national party committee and its Senate campaign committee may jointly contribute to a candidate for United States Senate, in any election, up to $35,000 per calendar year.

103. Under FECA, 2 U.S.C. §441a(a)(1), as amended by BCRA section 307(a), an individual can contribute up to $2,000 per election to a candidate for Federal office.

104. The limitations described in paragraphs 101 through 103 above, with respect to contributions by an individual to a national party committee and by an individual to a candidate for Federal office, and the limitation on the amount that national party committees can contribute to a candidate for U.S. Senate, are all indexed for inflation, over time, under FECA, 2 U.S.C. §441a(c)(1)(D), as added by BCRA section 307(d). The BCRA does not provide that the limits on contributions to state and local parties shall be similarly indexed.

105. The effect of indexing for inflation the limitations on contributions to national parties and candidates, over time, but not similarly indexing the limitations on contributions to state and local party committees, will be to severely erode the ability of state and local party committees to engage in political communication and otherwise participate in the political process relative to national party committees and candidates for federal office.

106. By thus severely disadvantaging state and local party committees with respect to their ability to engage in political communication and otherwise participate in the political process, the BCRA deprives state and local party committees of the equal protection of the laws guaranteed by the Fifth Amendment to the U.S. Constitution.

COUNT IX

(Requirement that Local Party Committees Register and Report to FEC)

107. Plaintiffs re-allege and incorporate by reference all the allegations contained in the preceding paragraphs.

108. Plaintiff local party committees are not currently required to register with or file

reports with the FEC.

109. Under new section 323(b)(1) of FECA as added by BCRA section 101(a), and by virtue of the new definition of "Federal election activity" in FECA section 320(A) as added by BCRA section 101(a), local party committees are effectively required to register with and file reports with the FEC if they spend any money at all—even one dollar—on voter registration, promotion of their parties or get-out-the-vote activity, even if such activity does not reference any candidate for any office, if any federal office is on the ballot.

110. Such local party committees will thereby be required to maintain detailed records in accordance with the regulations of the FEC and to file public disclosure reports to the FEC setting forth in detail their receipts and disbursements, at least six times a year during a year in which a federal election takes place, in addition to any other reports they may be required to file with state or local election authorities. Such recordkeeping and reporting requirements will require expenditure of funds that will represent a substantial portion of the total revenues and will in some cases exceed the total revenues of such local party committees.

111. In addition, under FECA, 2 U.S.C. §434(e)(2)(A), as amended by BCRA section 103(a), any state or local party committee that spends more than $5,000 in the aggregate per calendar year on "Federal election activity," including any voter registration or get-out-the-vote activities not referencing any candidate, will be required to file disclosure reports with the FEC monthly, thereby increasing the burdens described in paragraphs 109 and 110 above.

112. By imposing severe burdens on the ability of local party committees to engage in core political speech and activity, the BCRA violates the rights of freedom of speech and association of plaintiff local party committees protected by the First Amendment to the U.S. Constitution.

IRREPARABLE INJURY AND INADEQUATE REMEDY AT LAW

113. Based on the allegations in the preceding paragraphs, the provisions of the BCRA described therein are causing and will continue to cause immediate and irreparable injury to plaintiffs by virtue of the violation of their rights of free speech, association, due process and equal protection under the United States Constitution. Plaintiffs have no adequate remedy at law for the deprivation of these rights, and therefore seek to have those provisions declared unconstitutional and permanently enjoined.

PRAYER FOR RELIEF

Wherefore, plaintiffs pray for the following relief:

1) An order and judgment declaring the aforementioned provisions of the BCRA unconstitutional;

2) An order and judgment enjoining defendants from enforcing the aforementioned provisions of the BCRA;

3) Costs and attorneys fees as authorized by law; and

4) For such further relief that the Court deems just and appropriate.

Respectfully submitted,

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