

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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LIBERTARIAN NATIONAL COMMITTEE, INC.,	)	Civ. No. 11-562 (RLW)
Plaintiff,	)	
v.	)	
FEDERAL ELECTION COMMISSION,	)	PROPOSED FINDINGS OF FACT
Defendant.	)	

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**DEFENDANT FEDERAL ELECTION COMMISSION'S  
PROPOSED FINDINGS OF FACT**

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**I. The Parties**

**A. Defendant Federal Election Commission**

1. Defendant Federal Election Commission (“Commission” or “FEC”) is an independent agency of the United States with exclusive jurisdiction over the administration, interpretation, and civil enforcement of the Federal Election Campaign Act (“FECA” or “Act”), 2 U.S.C. §§ 431-57. The Commission is empowered to formulate policy with respect to FECA (*id.* § 437c(b)(1)); to make rules and regulations necessary to carry out the Act (*id.* §§ 437d(a)(8), 438(a)(8), 438(d)); to issue advisory opinions concerning the application of FECA and Commission regulations to any proposed transaction or activity (*id.* §§ 437d(a)(7), 437f); and to civilly enforce the Act and the Commission’s regulations (*id.* §§ 437c(b)(1), 437g).

**B. Plaintiff Libertarian National Committee, Inc.**

2. Plaintiff Libertarian National Committee, Inc. (“LNC”) is the national committee of the Libertarian Party. (2 U.S.C. § 431(14).) The LNC’s headquarters is in Washington, D.C. (First Am. Compl. (“Compl.”) ¶ 4 (Docket No. 13).)

3. The LNC seeks declaratory relief and an order permanently enjoining the FEC “from enforcing 2 U.S.C. §§ 441a and 441i in relation to the contribution, solicitation, acceptance, and spending of money from decedents’ bequests.” (Compl., Prayer for Relief ¶ 1 (Docket No. 13).)

4. The LNC is subject to FECA’s annual limit on contributions to “political committees established and maintained by a national political party” (“national party committees”). (2 U.S.C. § 441a(a)(1)(B).) That contribution limit, which is adjusted for inflation in odd-numbered years (*id.* § 441a(c)(1)), is currently \$30,800 (Price Index

Adjustments for Contribution and Expenditure Limits and Lobbyist Bundling Disclosure Threshold, 76 Fed. Reg. 8368-70 (Feb. 14, 2011)).

5. The LNC is also subject to FECA's ban on national party committees soliciting or accepting "soft money," that is, any funds not subject to FECA's contribution limits. (2 U.S.C. § 441i(a)(1).)

6. Like most political parties, the Libertarian Party maintains multiple national party committees. There are three types of national party committees: national committees, House campaign committees, and Senate campaign committees. (11 C.F.R. § 110.1(c)(2).) The Libertarian Party maintains two national party committees: The LNC and the Libertarian National Congressional Committee ("LNCC"). (LNCC Statement of Organization, FEC Exh. 1.) The Democratic Party has three national party committees: the Democratic National Committee ("DNC"), the Democratic Congressional Campaign Committee ("DCCC"), and the Democratic Senatorial Campaign Committee ("DSCC"). (Declaration of Paul C. Clark II, Ph.D. ("Clark Decl.") ¶ 1, FEC Exh. 2.) The Republican Party also maintains three national party committees: the Republican National Committee ("RNC"), the National Republican Congressional Committee, and the National Republican Senatorial Committee ("NRSC"). (*Id.*)

7. FECA's limit on contributions to a national party committee applies separately to each of a political party's national party committees. (11 C.F.R. § 110.1(c)(3).) For example, FECA permits an individual who wants to contribute to the Libertarian Party in 2012 to give \$30,800 to the LNC and another \$30,800 to the LNCC. (*See id.*)

8. In this case, the LNC claims that FECA's contribution and solicitation limits, as applied to bequests, violate the alleged First Amendment rights of all national party committees and their supporters, not only those of the LNC and its supporters. (Def. FEC's First Set of Disc.

Reqs. to Pl. LNC (“FEC’s First Disc. Reqs.”) at Req. for Admis. (“RFA”) No. 7, FEC Exh. 3; Resp. to Def.’s Reqs. for Admis. (“LNC’s Resp. to FEC’s RFAs”) No. 7, FEC Exh. 4; Compl. ¶ 3 (Docket No. 13).)

## II. The Burrington Bequest to the LNC

### A. Raymond Groves Burrington Bequeathed \$217,734 to the LNC, an Amount More Than Seven Times Greater Than FECA’s Limit on Contributions to National Party Committees

9. LNC contributor Raymond Groves Burrington died on April 26, 2007. (Compl. ¶ 14 (Docket No. 13); Resp. to Def.’s Interrog. No. 11, FEC Exh. 5.)

10. Burrington’s Last Will and Testament contained a residuary bequest to the Libertarian Party of 25 percent of his estate remaining after the payment of his debts and specific bequests. (Last Will and Testament of Raymond Groves Burrington at 2, FEC Exh. 6.)

11. On November 13, 2008, the co-executor of Burrington’s estate (“Estate”) informed the LNC that its 25 percent share of the Estate amounted to \$217,734 (“Bequest”). (Email from Steven K. Bowling, Howard & Howard, to William Hall (Nov. 13, 2008 8:09am), FEC Exh. 7; Compl. ¶ 14 (Docket No. 13).)

12. The bequest of \$217,734 is more than seven times greater than FECA’s annual limit on contributions to national party committees (2 U.S.C. § 441a(a)(1)(B)), which was \$28,500 when Burrington died in 2007 (Price Index Increases for Expenditure and Contribution Limitations and Lobbyist Bundling Disclosure Threshold, 72 Fed. Reg. 5294-96 (Feb. 5, 2007)) and is \$30,800 today (Price Index Adjustments for Contribution and Expenditure Limits and Lobbyist Bundling Disclosure Threshold, 76 Fed. Reg. 8368-70 (Feb. 14, 2011)).

13. FECA’s contribution limits apply to contributions made by an estate, and thus they limit the amount the Burrington Estate may contribute from the Bequest to the LNC each

year, just as FECA limited the amount Burrington could have contributed to the LNC each year during his lifetime. (*See* FEC Advisory Op. 2004-02 (Feb. 26, 2004), FEC Exh. 8.)

14. Burrington is the only individual ever to bequeath to the LNC an amount in excess of FECA's applicable contribution limit. (Resp. to Def.'s Interrog. No. 15, FEC Exh. 5.)

**B. To Comply with FECA's Limit, the Burrington Estate and the LNC Agreed to Deposit the Bequest into an Escrow Account, from Which the Estate Makes Annual Contributions to the LNC**

15. An estate is permitted to deposit a bequest that exceeds FECA's applicable contribution limit into a third-party account, and then the estate may make annual, FECA-compliant contributions from that account to a political committee — so long as the political committee does not exercise any control over the undistributed funds in the third-party account. (*See* FEC Advisory Op. 2004-02 (Feb. 26, 2004), FEC Exh. 8.)

16. The Burrington Estate made contributions of \$28,500 from the \$217,734 Bequest to the LNC in December 2007 and March 2008, in compliance with FECA's contribution limit. (Letter from Steven K. Bowling, Howard & Howard, to Robert S. Kraus, Director of Operations, Libertarian Party (Dec. 19, 2007), FEC Exh. 9; Letter from Steven K. Bowling, Howard & Howard, to Robert S. Kraus, Director of Operations, Libertarian Party (Mar. 17, 2008), FEC Exh. 10.) The March 2008 contribution check was drawn from the account of "Estate of Raymond Groves Burrington." (Letter from Steven K. Bowling, Howard & Howard, to Robert S. Kraus, Director of Operations, Libertarian Party (Mar. 17, 2008), FEC Exh. 10.)

17. On December 22, 2008, the Estate and the LNC agreed to deposit the remaining \$160,734 of the Bequest into an escrow account, from which the escrow agent, Mercantile Bank of Michigan, would distribute annual contributions from the Estate to the LNC in amounts equal to FECA's contribution limit. (E-mail from Steven K. Bowling, Howard & Howard, to William

Hall, Warner Norcross & Judd LLP (Nov. 20, 2007 3:57pm), FEC Exh. 11; Letter from William W. Hall, Warner Norcross & Judd LLP, to Melanie Salamone, Mercantile Bank of Michigan (Dec. 22, 2008), FEC Exh. 12; Compl. ¶ 15 (Docket No. 13).)

18. From the escrow account, the Estate contributed \$30,400 of the Bequest to the LNC in 2009 (LNC FEC Form 3X, Schedule A at C (Jan. 13, 2009), FEC Exh. 13; LNC FEC Form 3X, Schedule A at C (Feb. 3, 2009), FEC Exh. 14), and 2010 (LNC FEC Form 3X, Schedule A at B (Apr. 16, 2010), FEC Exh. 15), and \$30,800 in 2011 (LNC FEC Form 3X, Schedule A at A (May 20, 2011), FEC Exh. 16), in compliance with FECA's then-applicable contribution limits. The 2009 contribution check to the LNC was drawn from the account of "Mercantile Bank of Michigan Escrow Agent for the Estate of Raymond G. Burrington." (Letter from William W. Hall, Warner Norcross & Judd LLP, to Paul R. Wegener, Vice President, Mercantile Bank at 2 (Jan. 2, 2009), FEC Exh. 17.)

19. The estates of other individuals who bequeathed funds to national party committees in excess of FECA's limits have similarly deposited the bequeathed funds into an escrow account or a trust, and these estates have then made annual, FECA-compliant contributions from those accounts to the national party committees. For example, in September 2011, the RNC and the Estate of Eleanor Schwarz created an irrevocable trust to hold the \$574,432.33 Schwarz bequeathed to the RNC upon her death. (Declaration in Trust Creating the Eleanor Schwarz Irrevocable Trust for the Benefit of the RNC ("Schwarz Trust Agreement") (Sept. 2, 2011), FEC Exh. 18; Clark Decl., Exh. C at RNC 117, FEC Exh. 2.) The trust agreement states that in order to comply with FECA's contribution limits, the trust will hold the bequest and "shall pay the maximum amount of the trust principal to the RNC as is permitted by the Federal Election Code, on an annual basis." (Schwarz Trust Agreement at 3, FEC Exh. 18.)

Similarly, in 2007, Michael P. Buckley left a residual bequest to the DNC of 25 percent of his estate, which amounted to \$200,000. (Letter from Helene Milman, Trustee, Michael P. Buckley Trust, to Bradley Marshall, DNC (Oct. 12, 2010) (“Milman Letter”), FEC Exh. 19.) In compliance with FECA, the trust contributed \$28,500 to the DNC in 2008 and \$30,400 in 2009, and retained the remainder of the bequest for future contributions. (*Id.*)

### **III. Unlimited Donations to National Party Committees Pose a Danger of Corruption and Its Appearance**

#### **A. National Party Committees, Including the LNC, Are Closely Linked With Their Federal Candidates and Officeholders**

20. National political parties are “inextricably intertwined” with their federal officeholders and candidates (*McConnell v. FEC*, 540 U.S. 93, 155 (2003) (internal quotation marks omitted), *overruled in part on other grounds by Citizens United v. FEC*, 130 S.Ct. 876 (2010)), with whom they “enjoy a special relationship and unity of interest” (*id.* at 145). In fact, ““[t]here is no meaningful separation between the national party committees and the public officials who control them.”” (*Id.* at 155 (quoting *McConnell v. FEC*, 251 F. Supp. 2d 176, 468-69 (D.D.C. 2003) (Kollar-Kotelly, J.) (quoting Expert Report of Thomas E. Mann (“Mann Expert Report”) at 29 [DEV 1-Tab 1]<sup>1</sup>))).

21. The national party committees of the two major parties — the Democratic Party and the Republican Party — are “both run by, and largely composed of, federal officeholders and candidates.” (*McConnell*, 540 U.S. at 155.) “The President typically controls his party’s national committee, and once a favorite has emerged for the presidential nomination of the other party, that candidate and his party’s national committee typically work closely together.”

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<sup>1</sup> “DEV” and “Tab” citations refer to Defendants’ Exhibit Volumes for *McConnell v. FEC*, Civ. No. 02-582 (D.D.C.). For the Court’s convenience, the Commission has submitted a DVD containing the *McConnell* DEVs to the Court with this filing.

(*McConnell*, 251 F. Supp. 2d at 697 (Kollar-Kotelly, J.)) The leaders of the two major parties are also the parties' federal candidates, officeholders, and important Congressional leaders. (*Id.* at 469 (Kollar-Kotelly, J.) ("[T]he internal structure of parties permits, for example, former U.S. Senator D'Amato, who chaired the [RSCC] from 1995-97, to at the same time serve as chair of the Senate Banking, Housing, and Urban Affairs Committee.")) (alterations in original) (quoting Expert Report of Donald Green, *Report on the Bipartisan Campaign Reform Act* ("Green Expert Report") at 9-10 [DEV 1-Tab 3]).)

22. Similarly, LNC officials have run for federal office as Libertarian Party candidates while holding their offices with the LNC. (Deposition of LNC witness William Redpath pursuant to Federal Rule of Civil Procedure 30(b)(6) ("LNC 30(b)(6) Dep.") at 24:16-25:9, FEC Exh. 20.) For example, William Redpath served as the LNC's national chair from July 2006 to late May 2010 (*id.* at 7:3-4; 8:1-5) and has served as the LNC's treasurer since December 2010 (*id.* at 7:3-8). Redpath ran as a Libertarian Party candidate for United States Senate in 2008 and for United States House of Representatives in 2010 (*id.* at 23:1-5, 11-13; 23:20-24:11). As national chair, Redpath was the LNC's "chief executive officer . . . with full authority to direct [the LNC's] business and affairs." (Libertarian Party Bylaws and Convention Rules ("LNC Bylaws") at 3, FEC Exh. 21.) The LNC's rules do not bar its leaders from also running for federal office. (LNC 30(b)(6) Dep. at 24:12-15, FEC Exh. 20.)

23. Political parties are "primarily concerned with electing their candidates" to office. (*McConnell*, 251 F. Supp. 2d at 469 (Kollar-Kotelly, J.)) They have no economic interests apart from this ultimate goal, and thus "the money they raise is spent assisting their candidates' campaigns." (*Id.* at 469-70 (citing Declaration of Hon. Martin Meehan in *RNC v. FEC*, Civ. No. 98-CV-1207 (D.D.C.) ¶¶ 3-4 [DEV 68-Tab 30].)) As a former member of Congress explained:

The ultimate goal of a political party such as the Democratic Party is to get as many Party members as possible into elective office, and in doing so to increase voting and Party activity by average Party members. The Party does this by developing principles on public policy matters the Party stands for, and then by finding candidates to run for the various political offices who represent those principles for the Party. When the Party finds its candidates, it tries to raise money to help get like-minded people to participate in the elections, and to try to get the Party's candidates the resources they need to get their message out to voters.

(*Id.*)

24. Similarly, it is the LNC's mission to "move public policy in a Libertarian direction by . . . nominating candidates for political office that are Libertarian and trying to get them elected." (LNC 30(b)(6) Dep. at 9:17-10:1, FEC Exh. 20.) It is the LNC's goal to "have a Libertarian president and a Libertarian Congress and Libertarians elected to governorships and state general assemblies, state legislatures." (*Id.* at 10:6-17.) As the LNC told a donor in 2003, the LNC is "in the business of winning elections" and the donor's "gift goes towards making that happen." (Letter from Joe Seehusen, Executive Director, LNC, to Dr. Charles E. Test (July 17, 2003), FEC Exh. 22.)

25. In any one election cycle, the Libertarian Party typically fields more than 200 candidates for federal office. (LNC 30(b)(6) Dep. at 16:5-7, FEC Exh. 20.) In November 2010, more than 800 Libertarian candidates ran for federal, state, and local offices. (*See Our History*, Libertarian Party, <http://www.lp.org/our-history> (last visited Apr. 20, 2012), FEC Exh. 23.) The LNC fields the Libertarian Party's candidates for United States president and vice-president, and Libertarian Party candidates for United States Congress are fielded by the party's state-level affiliates (LNC 30(b)(6) Dep. at 15:18-22, FEC Exh. 20), whose charters the LNC can grant and revoke (LNC Bylaws at 2, FEC Exh. 21).

26. The LNC spends the bulk of its resources on obtaining access to the ballot for its candidates. (Compl. ¶ 13 (Docket No. 13).) Obtaining ballot access is “probably the most important thing the [LNC] does,” since the LNC’s “role in this electoral system is to field as many candidates . . . as possible for federal and state and local offices[.]” (LNC 30(b)(6) Dep. at 32:17-33:14, FEC Exh. 20.) Thus, the LNC funds petition drives for the party’s federal candidates (*id.* at 20:1-9) and works closely with its presidential candidate’s campaign on ballot-access issues (*id.* at 20:11-13; 21:14-18).

27. In order to receive financial support from the LNC, Libertarian Party candidates must be certified as Libertarian candidates by the governing board of the party in their state and must not support any presidential ticket other than the Libertarian Party’s presidential ticket. (Libertarian National Committee Policy Manual (Nov. 25, 2011) at 39, FEC Exh. 24.) The LNC has the power to take the Libertarian Party nomination away from a presidential ticket that fails to conduct its campaign in accordance with the party’s platform. (LNC Bylaws at 8-9, FEC Exh. 21; LNC 30(b)(6) Dep. at 27:10-19, FEC Exh. 20.)

**B. National Party Committees, Including the LNC, Were Permitted to Accept Unlimited Donations of “Soft Money” Until Congress Enacted the Bipartisan Campaign Reform Act of 2002**

28. Prior to November 6, 2002, FECA limited donations to national party committees only if they were made for the purpose of influencing a federal election. (*McConnell*, 540 U.S. at 122-23.) Such contributions are known as “federal” or “hard-money” contributions. (*Id.* at 122.) In contrast, FECA did not limit “[d]onations made [to national party committees] solely for the purpose of influencing state or local elections,” which are known as “nonfederal” or “soft-money” donations. (*Id.* at 122-23.)

29. During this time, the national party committees accepted unlimited amounts of soft-money donations, which were often “dramatically larger than the contributions of hard money permitted by FECA.” (*McConnell*, 540 U.S. at 124-25.) For example, in the 2000 election cycle, “the political parties raised almost \$300 million — 60% of their total soft-money fundraising — from just 800 donors, each of which contributed a minimum of \$120,000.” (*Id.* at 124.)

30. Because the national party committees were not limited in how much soft money they could raise, they “put a premium on raising and spending soft money to advance the election prospects of their candidates.” (*McConnell*, 251 F. Supp. 2d at 817 (Leon, J.) (citing Mann Expert Report at 23).) Despite the fact that, as a technical matter, soft money could be used only for non-federal election purposes, national party committees used soft money to finance broadcast advertisements that ostensibly dealt with public policy issues (“issue ads”) but which in fact focused closely on federal candidates and had the purpose and effect of influencing federal elections. (*McConnell*, 540 U.S. at 126-29.)

31. In 2002, Congress passed the Bipartisan Campaign Reform Act of 2002 (“BCRA”), Pub. L. 107-155, 116 Stat. 81 (2002), which “plug[ged] the soft-money loophole” by adding 2 U.S.C. § 441i(a) to FECA. (*McConnell*, 540 U.S. at 133.) The “soft-money ban,” as that provision is known, “prohibits national party committees and their agents from soliciting, receiving, directing, or spending any soft money.” (*Id.* at 133, 187.) As a result, national party committees today may generally accept only hard-money contributions, which are subject to FECA’s contribution limit found at 2 U.S.C. § 441a(a)(1)(B).

32. In this case, the LNC seeks an order declaring BCRA’s soft-money ban (2 U.S.C. § 441i(a)) and FECA’s limit on hard-money contributions (2 U.S.C. § 441a(a)(1)(B))

unconstitutional as applied to the contribution of bequeathed funds to national party committees. (Compl., Prayer for Relief ¶¶ 1-2 (Docket No. 13).) Thus, the LNC seeks to accept unlimited contributions of bequeathed funds that could be used not only for the purpose of influencing state or local elections (*i.e.*, soft money) but also for the purpose of influencing federal elections (*i.e.*, hard money). (Compl. ¶¶ 15, 17 (Docket No. 13).)

**C. Unlimited Soft-Money Donations to National Party Committees Gave Rise to Corruption and Its Appearance**

33. Before BCRA outlawed them, unlimited “soft-money contributions to national party committees ha[d] a corrupting influence [and] g[a]ve rise to the appearance of corruption.” (*McConnell*, 540 U.S. at 145.)

34. The trading of soft money to national party committees in exchange for access to and influence over federal candidates and officeholders was rampant. (*McConnell*, 540 U.S. at 150-52 (“The record in the present case[] is replete with . . . examples of national party committees peddling access to federal candidates and officeholders in exchange for large soft-money donations.”) (citing *McConnell*, 251 F. Supp. 2d at 492-506 (Kollar-Kotelly, J.), 860-61 (Leon, J.)).) “[F]ederal candidates and officeholders enjoy a special relationship and unity of interest” with the national parties, which enables the parties to act as ““agents for spending on behalf of those who seek to produce obligated officeholders.”” (*McConnell*, 540 U.S. at 145 (quoting *FEC v. Colorado Republican Fed. Campaign Comm.*, 533 U.S. 431, 452 (2001) (“*Colorado II*”))). The “national parties have actively embraced” this role. (*Id.* at 145.)

Therefore, when unlimited soft-money donations to national party committees were legal, “[i]t [was] not only plausible, but likely, that candidates would feel grateful for such donations and that donors would seek to exploit that gratitude.” (*McConnell*, 540 U.S. at 145.) Soft money was especially valuable to federal candidates during this period because the national parties used

large amounts of soft money to finance issue ads, which focused closely on federal candidates and had the purpose and effect of influencing federal elections. (*Id.* at 126-29; *see also id.* at 185 (“The proliferation of sham issue ads has driven the soft-money explosion.”)

35. In addition to having a corrupting influence, unlimited soft-money donations to parties appeared corrupting to a ““significant majority”” of the American public, which “believe[d] that those who make large contributions to political parties have a major impact on the decisions made by federally elected officials”” and that the ““views of these big contributors sometimes carry more weight than do the views of constituents or the best interests of the country.”” (*McConnell*, 251 F. Supp. 2d at 871 (Leon, J.) (quoting Expert Report of Mark Mellman & Richard Wirthlin, *Research Findings of a Telephone Study Among 1300 Adult Americans* 6 (Sept. 23, 2002) [DEV 2-Tab 5]).)

**D. Federal Candidates and Officeholders Solicited Unlimited Soft-Money Donations for Their National Party Committees and Generally Knew Who the Soft-Money Donors Were**

36. Before BCRA, when parties were permitted to accept unlimited soft-money donations, “federal officeholders . . . commonly asked donors to make soft-money donations to national and state committees “solely in order to assist federal campaigns,” including the officeholder’s own” — “despite FECA’s hard-money limits on direct contributions to candidates.” (*McConnell*, 540 U.S. at 146 (quoting *McConnell*, 251 F.Supp.2d. at 472 (opinion Kollar-Kotelly, J.) (quoting Declaration of Wade Randlett (“Randlett Decl.”) ¶¶ 6-9 [DEV 8-Tab 32]).)

37. Once donors had contributed the maximum amount of hard money allowed by FECA, candidates would ask them to make an additional donation of unlimited soft money to the candidate’s national party committee. (*McConnell*, 540 U.S. at 125 & n.15.) “Such solicitations

were not uncommon.” (*Id.* at 125.) And the national party committees often asked their candidates to solicit soft-money donations from donors who had already given the maximum allowed to the candidate’s campaign. (*McConnell*, 251 F. Supp. 2d. at 473 (Kollar-Kotelly, J.).)

38. Even when federal candidates and officeholders were not directly soliciting soft money, they nevertheless “were well aware of the identities of the [soft-money] donors.” (*McConnell*, 540 U.S. at 147; *see also McConnell*, 251 F. Supp. 2d at 487-88 (Kollar-Kotelly, J.), 853-55 (Leon, J.).) The national party committees distributed lists of potential or actual soft-money donors to members of Congress. (*McConnell*, 540 U.S. at 147.) Soft-money donors could be easily identified in public FEC reports. (*Id.* at 148 n.47.) And “‘there [was] communication among Members about who ha[d] made soft money donations and at what level they ha[d] given, and this [was] widely known and understood by the Members and their staff.’” (*McConnell*, 251 F. Supp. 2d at 488 (Kollar-Kotelly, J) (quoting Randlett Decl. [DEV 8-Tab 32]).)

39. Additionally, many soft-money donors “themselves would report their generosity to officeholders.” (*McConnell*, 540 U.S. at 147; *see also McConnell*, 251 F. Supp. 2d at 488 (Kollar-Kotelly, J.), 853-55 (Leon, J.).) For example, one lobbyist advised his clients to “personally give the [soft] money to a Member of Congress who then can give the money to the Chair of the party committee[.] . . . That way the donor, with one check, gets ‘chits’ with multiple Members of Congress.” (*McConnell*, 251 F. Supp. 2d at 784 (Leon, J.) (quoting Declaration of Robert W. Hickmott (“Hickmott Decl.”) ¶ 9 [DEV 6-Tab 19]).)

40. As a result, “[f]or a member not to know the identities of these donors, he or she must actively avoid such knowledge as it is provided by the national political parties and the donors themselves.”” (*McConnell*, 540 U.S. at 147 (quoting *McConnell*, 251 F. Supp. 2d at 487-

88) (Kollar-Kotelly, J.) (emphasis added); *see also id.* (citing *McConnell*, 251 F. Supp. 2d at 853-55 (Leon, J.).)

**E. Donors Often Give to National Party Committees to Obtain Access to and Influence over Federal Candidates and Officeholders, and National Party Committees, Including the LNC, Willingly Facilitate Those Efforts**

41. Before BCRA, federal candidates and donors “exploited the soft-money loophole, the former to increase their prospects of election and the latter to create debt on the part of officeholders, with the national parties serving as willing intermediaries.” (*McConnell*, 540 U.S. at 146; *see also id.* at 150-52.

42. Wealthy individuals donated substantial amounts of soft money to national party committees in order to gain access to federal candidates and officeholders “for the express purpose of securing influence over federal officials.” (*McConnell*, 540 U.S. at 147.) Contributors found that, because they were unlimited, soft-money donations were “most effective at obtaining special access[.]” (*McConnell*, 251 F. Supp. at 489 (Kollar-Kotelly, J.).) Special access is valuable to donors because it is “a necessary ingredient for influencing the legislative process.” (*Id.*)

43. Donors of unlimited soft money were not concerned with what was done with their donation to the national party committee, but rather with whether they had done what a member of Congress had asked them to do. (*McConnell*, 251 F. Supp. 2d at 472 (citing Randlett Decl. ¶¶ 6-9 [DEV 8-Tab 32]).) Soft-money donors may have been giving to the national party committees, but ““the money [was] given so that the contributors c[ould] be close to, and recognized by, Members, Presidents, and Administration officials who have power.”” (*Id.* at 472 (quoting Declaration of Robert Rozen (“Rozen Decl.”) ¶ 15 [DEV 8-Tab 33]).)

44. Moreover, donors gave large amounts of soft money to the national party committees out of fear that if they did not, the parties' officeholders would ignore their views or give an advantage to competing business interests that did give soft money. (*McConnell*, 251 F. Supp. 2d at 490 (Kollar-Kotelly, J.) (citing Declaration of Senator Warren Rudman ("Rudman Decl.") ¶ 5 [DEV 8-Tab 34]).) This was true "in the preponderance of cases where wealthy individuals g[a]ve \$50,000, \$100,000, \$250,000, or even more to political parties in soft money donations." (*Id.* (quoting Rudman Decl. ¶ 5 [DEV 8-Tab 34]).)

45. The access obtained by soft-money donors did in fact give them influence over officeholders and legislation. (*McConnell*, 540 U.S. at 149-50 ("The evidence connects soft money to manipulations of the legislative calendar, leading to Congress' failure to enact, among other things, generic drug legislation, tort reform, and tobacco legislation.") As a former Senator explained: "Who, after all, can seriously contend that a \$100,000 donation does not alter the way one thinks about—and quite possibly votes on—an issue?" (*Id.* at 149 (quoting *McConnell*, 251 F. Supp. 2d at 481 (Kollar-Kotelly, J.) (quoting Declaration of Alan K. Simpson ("Simpson Decl.") at ¶ 10 [DEV 9-Tab 38])).)

46. Federal officeholders, who have limited time, would nevertheless make time available in their schedules to meet with . . . wealthy individuals who gave large sums to their parties. These [we]re not idle chit-chats about the philosophy of democracy[.] Senators [we]re pressed by their benefactors to introduce legislation, to amend legislation, to block legislation, and to vote on legislation in a certain way.

(*McConnell*, 540 U.S. at 150-51 (quoting *McConnell*, 251 F. Supp. 2d at 496 (Kollar-Kotelly, J.) (quoting Rudman Decl. ¶ 7 [DEV 8-Tab 34]))).

47. For example, the DNC rewarded certain large soft-money donors by allowing them to attend White House coffees with President Bill Clinton. (*McConnell*, 540 U.S. at 130.)

Moreover, a donor who gave \$300,000 in soft money to the DNC admitted that his donation was “motivated by his interest in gaining the Federal Government’s support for an oil-line project in the Caucasus.” (*Id.*) Another donor received the chance to make a personal pitch to President Clinton on an issue due to his \$500,000 soft-money donation to the DNC. (*McConnell*, 251 F. Supp. 2d at 859 (Leon, J.) (citing Declaration of Arnold Hiatt ¶ 9 [DEV 6–Tab 18]).)

48. In addition, in 1995, RNC chair Haley Barbour asked then-Senate Majority Leader Bob Dole to meet with the CEO of Pfizer — a major RNC soft-money donor whom Barbour described as “extremely loyal and generous” — to discuss the CEO’s proposal to extend a lucrative tax credit in the Internal Revenue Code. (*McConnell*, 251 F. Supp. 2d at 859-60 (Leon, J.).)

49. The national party committees took advantage of donors’ demand for special access by creating major-donor programs that offered menus of increasing levels of preferential access to federal candidates and officeholders that donors could purchase with increasingly large donations of soft money. (*McConnell*, 540 U.S. at 151; *McConnell*, 251 F. Supp. 2d at 500-06 (Kollar-Kotelly, J.), 860-63 (Leon, J.).)

50. For instance, the DCCC offered “a range of donor options, starting with the \$10,000-per-year Business Forum program, and going up to the \$100,000-per-year National Finance Board program.” (*McConnell*, 540 U.S. at 151.) Donors who gave enough soft money for membership in the National Finance Board program were entitled to conference calls, private dinners, and retreats with Democratic Members of Congress and other party leaders. (*Id.* at 151-52; *see also, e.g.*, *McConnell*, 251 F. Supp. 2d at 504 (Kollar-Kotelly, J.), 863 (Leon J.).)

51. Similarly, the RNC offered its donors membership in major-donor groups, two of which were called the “Republican Eagles” and “Team 100.” (*McConnell*, 540 U.S. at 130

(internal quotation marks omitted).) Both promised “special access to high-ranking Republican elected officials, including governors, senators, and representatives.” (*Id.*) A donor could become a member of the Republican Eagles for \$15,000 per year, while membership in Team 100 required an initial soft-money donation of \$100,000, and \$25,000 for each of the following three years. (*McConnell*, 540 U.S. at 130 & n.30; *see also, e.g., McConnell*, 251 F. Supp. 2d at 861-62 (Leon J.).)

52. Even after BCRA largely eliminated soft-money donations, national party committees have continued to solicit contributions (subject to FECA’s limits) in exchange for increasing amounts of preferential access to their federal candidates and officeholders. For example, in 2009, the RNC offered potential donors a menu of major-donor groups to join, ranging from the \$15,000-per-year Majority Fund to the \$60,800-per-year Republican Regents. (Republican National Committee Major Donor Programs 2009, FEC Exh. 25.) The benefits of joining these groups included invitations to “small, private events with elected Republican leaders.” (*Id.*) The Republican Regents and Team 100 groups explicitly offered members the opportunity to attend national meetings “with elected officials and policy experts,” and regional meetings that “bring together lawmakers from their home states for candid discussions in an intimate environment.” (Team 100 and Republican Regents Solicitations, FEC Exh. 26.) In 2008, the RNC invited members of its major-donor groups to its “GOP Presidential Trust Dinner,” featuring the Republican Party’s then-candidates for president: Rudolph Giuliani, John McCain, Ron Paul, Mitt Romney, and Fred Thompson. (RNC Invitation for GOP Presidential Trust Dinner from *RNC v. FEC*, No. 08-1953 (D.D.C. 2008) at RNC000085, FEC Exh. 27.) In August 2009, the RNC held a Team 100 event for four days in Wyoming, featuring “Members of Congress, GOP Candidates & Political Pundits.” (RNC Invitation to August 2009 Event, FEC

Exh. 28.) In October 2009, the RNC held a major-donor event in Las Vegas featuring Senator John Ensign and Congressman Dean Heller. (RNC Invitation to October 2009 Event, FEC Exh. 29.) In June 2010, the RNC held a three-day retreat in Napa Valley for members of its Republican Regents and Team 100 members, featuring Rudy Giuliani and RNC chair Michael Steele, among others. (RNC Invitation to June 2010 Event, FEC Exh. 30.)

53. A recent New York Times analysis found that people “who donated the most to [President Obama] and the Democratic Party since he started running for president [in 2012] were far more likely to visit the White House than others.” (Mike McIntire & Michael Luo, *White House Opens Door to Big Donors, and Lobbyists Slip In*, N.Y. Times, Apr. 14, 2012, <http://www.nytimes.com/2012/04/15/us/politics/white-house-doors-open-for-big-donors.html>, FEC Exh. 31.) Former Member of Congress and former DCCC chair Patrick J. Kennedy contributed the maximum permitted by FECA to the Democratic Party last fall, and was able to visit the White House several times to request support for his group developing treatments for brain disorders. (*Id.*) He said that “contributions were simply a part of ‘how this business works.’” (*Id.*) “‘If you want to call it a ‘quid pro quo,’ fine,’ [Kennedy said, but] ‘[a]t the end of the day, I want to make sure I do my part.’” (*Id.*) Kennedy added that he “know[s] that they look at the [contribution] reports, [and] it won’t hurt when I ask them for a favor if they don’t see me as a slouch.”” (*Id.*) The report concluded: “Although those in office invariably deny it, the notion that access is available at a price is a well-founded reality of Washington.” (*Id.*)

54. Just like the major parties, the LNC offers its donors membership in various major-donor groups that provide “certain perks” and benefits — including preferential access to the Libertarian Party’s federal candidates and high-ranking LNC officials. (LNC 30(b)(6) Dep. at 35:6-36:14, FEC Exh. 20; Libertarian National Committee Policy Manual (Dec. 11, 2011)

(“LNC Policy Manual”), FEC Exh. 32.) For example, an LNC donor can become a member of the “Chairman’s Circle” for \$25,000 annually or \$2,500 monthly, and in return, receive “[d]irect contact with [the] National Chair, POTUS [(President of the United States)] nominee, or significant L[ibertarian ]P[arty] candidate during [the] campaign season.” (LNC Policy Manual at 33, 36, FEC Exh. 32.) Chairman’s Circle members also receive “VIP Seating . . . with [the] National Chair, LNC officer, special guest, or POTUS nominee at [the] National Convention banquet or other events.” (*Id.* at 36.) The LNC also offers membership in major-donor groups for annual donors of \$15,000 (“Select Benefactor”), \$5,000 (“Beacon of Liberty”), \$2,500 (“Pioneer of Freedom”), or \$1,500 (“Lifetime Founder”). (*Id.* at 33.) In addition to pre-determined benefits, LNC staff has the “discretion to create and bestow additional benefits” upon its major-donor group members. (*Id.* at 34.)

55. The LNC offers a monthly pledge program in which donors can agree to give a recurring monthly contribution to the LNC, and the LNC will automatically charge the donor’s credit card or checking account. (LNC 30(b)(6) Dep. at 29:22-30:5, FEC Exh. 20.) The monthly pledges continue indefinitely until the donor decides to end the donations. (*Id.* at 30:15-22.).

56. Donors can become members of an LNC major donor group on the basis of monthly pledges. For instance, to become a member of the Chairman’s Circle, a donor may either give a lump sum of \$25,000, or pledge to give \$2,500 monthly. (LNC Policy Manual at 33, FEC Exh. 32.) For donors who have made a monthly pledge, membership in a particular major donor group “begins at the beginning of the fourth month of the pledge.” (*Id.* at 37.)

57. Members of LNC’s top five major-donor groups are also granted membership in the LNC’s “Torch Club,” which entitles members to attend a special Torch Club event at the LNC’s national convention. (LNC Policy Manual at 37, FEC Exh. 32.) The Libertarian Party’s

federal candidates can attend this special event so long as they are also Torch Club members, and William Redpath has attended the event while serving as the LNC's national chair and running as a Libertarian Party candidate for federal office. (LNC 30(b)(6) Dep. at 41:1-42:6, FEC Exh. 20.)

58. For at least the last several years, the LNC has maintained major-donor groups that offer preferential-access benefits. In September 2008, the LNC invited major donors to a "VIP Wine & Cheese Reception and Candidate Forum," where they could "meet local and national candidates, [and] LNC . . . Board Members." (Libertarian Party VIP Wine & Cheese Reception and Candidate Forum Invitation, FEC Exh. 33.) LNC candidates for Vice President, Senate, and House of Representatives attended the event, including William Redpath, who was then the LNC's national chair. (*Id.*)

59. In May 2008, the LNC held a "Chairman's Circle Dinner" for Chairman's Circle major-donor group members, attended by then-candidate and national chair William Redpath. (LNC Chairman's Circle Dinner Invitation, FEC Exh. 34.)

60. In 2006, the LNC solicited \$5,000 annually from donors to become members of the Chairman's Advisory Council, which offered "monthly conference calls to discuss party matters" with the LNC national chair, "in-depth meetings with . . . key [LNC] headquarters staff," and "a special dinner that will take place at the [LNC's national] convention for council members only, along with key staff members and [the national chair]." (LNC Chairman's Advisory Council Letter (Feb. 9, 2006), FEC Exh. 35.)

61. In 2005, the LNC created a major donor group called the "Chairman's Council," which donors could join for two years with a donation of \$5,000. (LNC Chairman's Council

Letter at 2-3, FEC Exh. 36.) Members of the Chairman’s Council “met in regular conference calls and many attended a special, intimate dinner at the 2006 national convention.” (*Id.* at 3.)

62. The LNC offers the benefits of major-donor-group membership as “an inducement to hopefully have people increase their contributions.” (LNC 30(b)(6) Dep. at 49:2-5, FEC Exh. 20.) And the inducement has worked, as the groups have been effective in attracting larger donations for the LNC. (*Id.* at 37:9-20.) Donations from the “relatively small group of donors” who are members of the LNC’s major-donor groups account for a “substantial percentage of LNC revenue.” (*Id.* at 38:6-12.)

**F. National Party Committees, Including the LNC, Facilitate Their Largest Donors’ Access to Their Federal Candidates and Officeholders Not Only to Reward Past Contributions but Also to Encourage Future Ones**

63. National party committees and their federal candidates and officeholders reward their major donors with preferential access to thank them and reciprocate for donations they have already received, as recognized by one lobbyist during the time unlimited soft-money donations were legal: “‘‘You are doing a favor for somebody by making a large [soft money] donation and they appreciate it. Ordinarily, people feel inclined to reciprocate favors. Do a bigger favor for someone—that is, write a larger check—and they feel even more compelled to reciprocate.’’” (*McConnell*, 540 U.S. at 147 (alteration in original) (quoting *McConnell*, 251 F. Supp. 2d at 493 (Kollar-Kotelly, J.) (quoting Rozen Decl. ¶ 14 [DEV 8-Tab 33])).) A former Senator concurred: “‘‘You feel a sense of gratitude for [your donors’] support. This is even more true with the prevalence of much larger donations, even if those donations go to a party committee.’’” (*McConnell*, 251 F. Supp. 2d at 496 (quoting Declaration of Paul Simon ¶ 16 [DEV 9-Tab 37])).)

64. Major donors are granted preferential access to federal candidates and officeholders by national party committees in order to encourage future donations. As a former

Senator observed, ““When you don’t pay the piper that finances your campaigns, you will never get any more money from that piper. Since money is the mother’s milk of politics, you never want to be in that situation.”” (*McConnell*, 251 F.Supp.2d, at 481 (Kollar-Kotelly, J.) (quoting Simpson Decl. ¶ 10 [DEV 9-Tab 38]).) Indeed, ““most federal elected officials recognize that continued financial support from the donor often may be contingent upon the donor feeling that he or she has received a fair hearing and some degree of consideration or support.”” (*Id.* at 489-90 (quoting Declaration of Wright H. Andrews ¶ 8 [DEV 6-Tab 1]).) And as Senator John McCain has noted, ““legislators have been in situations where they would rather fit in an appointment with a soft money contributor than risk losing his or her donation to the party.”” (*Id.* at 496-97 (quoting Declaration of Senator John McCain ¶ 6 [DEV 8-Tab 29]).)

65. The LNC offers benefits to its major donors not only as “a way to say thank you for [their] generosity to the [LNC],” but also “as an inducement to hopefully have people increase their contributions.” (LNC 30(b)(6) Dep. at 49:2-11, FEC Exh. 20.)

66. National party committees have granted major donors preferential access based on their promise to donate more in the future. For example, the RNC allows members of its major-donor groups to sign up for a payment plan. (Eagles Deposits to Date (Jan. 19, 2012), FEC Exh. 37.) During the soft-money era, donors could join the RNC’s Team 100 major-donor group and enjoy preferential-access benefits on the basis of an immediate \$100,000 donation and a commitment to donate \$25,000 annually for three years in the future. (*McConnell*, 540 U.S. at 130 & n.30.)

67. More recently, the RNC gave prospective members of its Republican Regents donor group an option to either immediately contribute \$60,800 to join or to “pledge to raise \$60,800 to fulfill [their] Republican Regents membership.” (RNC Republican Regents

Solicitation at RNC075, FEC Exh. 38.) Republican Regents members were invited to social events, excursions, and dinners that at times featured former Presidents Ronald Reagan, George H.W. Bush, George W. Bush, and members of Congress. (*Id.* at RNC084.)

68. The LNC also grants preferential-access benefits to its major donors on the basis of their promise to donate more money in the future. For example, a donor can become a member of the LNC's Chairman's Circle — which offers access to the LNC's presidential candidate among other LNC candidates — with either a \$25,000 annual donation or “\$2500 monthly in dues or contributions.” (LNC Policy Manual at 33, 36, FEC Exh. 32.) If the donor opts for the monthly pledges, “membership at that level begins at the beginning of the fourth month of the pledge.” (*Id.* at 37.)

#### **G. Federal Candidates and Officeholders Often Benefited Directly from Soft-Money Donations to Their National Party Committees**

69. When a donor gave unlimited soft money to a national party committee, there was “sometimes at least an implicit understanding that the money w[ould] be used to benefit a certain candidate,” and the candidates knew that if they raised unlimited soft-money, it would benefit their campaign later. (*McConnell*, 251 F. Supp. 2d at 822 (Leon, J.) (quoting Simpson Decl. ¶ 6 [DEV 9-Tab 38]).) Even though a donor could not give soft money directly to a federal candidate, “everyone kn[e]w[] that it [was] fairly easy to push the money through our tortured system to benefit specific candidates.” (*Id.* (quoting Simpson Decl. ¶ 7).)

70. The national party committees kept tallies of how much soft money candidates raised for them, and that amount would affect how much money the national party committees gave to the candidates to assist their campaigns. (*McConnell*, 540 U.S. at 146.) For example, the DSCC “gave little [nonfederal] money to the campaigns of those Senators who had not raised adequate [nonfederal] party funds.” (*McConnell*, 251 F. Supp. 2d at 474-75 (Kollar-Kotelly, J.)

(alterations in original) (quoting Declaration of Senator David Boren ¶ 4 [DEV 6-Tab 8]).)

Senators who did raise soft money for the DSCC “would receive the amount of their donations multiplied by a certain number that the DSCC had predetermined, assuming that the DSCC had raised other funds.” (*McConnell*, 251 F. Supp. 2d at 823 (Leon, J.) (citing Declaration of Senator Timothy E. Wirth, Exh. A ¶¶ 5, 8 [DEV 9-Tab 43])).

71. Donors were aware that their soft-money donation would benefit their favored federal candidate. (*McConnell*, 540 U.S. at 146.) The parties told donors that their soft-money donation could be “credited” to any candidate (*id.*), and that their donation “was not a direct contribution, but it was fairly close to direct” (*Colorado II*, 533 U.S. at 459 (internal quotation marks omitted)).

72. “[I]f a candidate could be assured that donations through a party could result in funds passed through to him for spending on virtually identical items as his own campaign funds, a candidate enjoying the patronage of affluent contributors would have a strong incentive not merely to direct donors to his party, but to promote circumvention as a step toward reducing the number of donors requiring time-consuming cultivation.” (*Colorado II*, 533 U.S. at 460).

**H. Federal Candidates and Officeholders Valued Soft-Money Donations to Their National Party Committees Regardless of How the Donations Were Used**

73. The “close connection and alignment of interests” existing between national party committees and their federal candidates and officeholders put the parties in a position to “sell access to federal officeholders in exchange for soft-money contributions that the party [could] then use for its own purposes.” (*McConnell*, 540 U.S. at 155.)

74. The fact that federal candidates and officeholders were willing to give their valuable time to soft-money donors even where the party would use the donation for its own

purposes indicated “that officeholders place[d] substantial value on the soft-money contribution themselves, without regard to their end use[.]” (*McConnell*, 540 U.S. at 155-56 (citing Green Expert Report [DEV 1-Tab 3])).) Indeed, Members of Congress have “an interest in a strong party that can assist its federal officeholders” in “‘perform[ing] its function of keeping tabs on statements, policies, and votes of opposition party members and groups.’” (*McConnell*, 251 F. Supp. 2d at 474-75 (Kollar-Kotelly, J) (quoting Declaration of Senator Dale Bumpers ¶ 10 [DEV 6-Tab 10]).)

75. That federal candidates and officeholders were willing to give their valuable time to soft-money donors even where the party would use the donation for its own purposes also indicated “that national committees are able to exert considerable control over federal officeholders.” (*McConnell*, 540 U.S. at 155-56 (citing Green Expert Report [DEV 1-Tab 3])).)

#### **IV. Unlimited Bequeathed Contributions to National Party Committees Would Pose a Danger of Corruption and Its Appearance**

##### **A. If Bequeathed Contributions Were Unlimited, It Would Create a New Source of Potentially Very Large Contributions for National Party Committees**

###### **1. Wealthy Individuals Who Want to Influence Federal Elections Have Exploited the Ability to Make Unlimited Contributions When Permitted**

76. Wealthy individuals have been willing to contribute vast amounts of money to influence federal elections when the law has permitted unlimited contributions. For example, while FECA prevents individuals from contributing more than \$2,500 per election directly to a federal candidate (2 U.S.C. § 441a(a)(1)(A); Price Index Adjustments for Contribution and Expenditure Limits and Lobbyist Bundling Disclosure Threshold, 76 Fed. Reg. 8368-70 (Feb. 14, 2011)), as of 2010, individuals may contribute unlimited sums to a political committee that makes only independent expenditures supporting federal candidates (commonly known as a

“super PAC”) (*see SpeechNow.org v. FEC*, 599 F.3d 686, 696 (D.C. Cir. 2010) (en banc); FEC Advisory Op. 2010-11 (July 22, 2010), FEC Exh. 39). For example, Harold Clark Simmons — an 80-year old businessman with a net worth of \$10 billion — donated more than \$18 million to conservative super PACs as of March 2012 in order to defeat President Obama’s reelection bid, and “to elect Republicans up and down the line in hopes they will change the overall U.S. tax and regulatory approach.” (Monica Langley, *Texas Billionaire Doles Out Election’s Biggest Checks*, Wall St. J., Mar. 23, 2012, <http://online.wsj.com/article/SB10001424052702303812904577291450562940874.html>, FEC Exh. 40.) “I have lots of money, and can give it legally now,”” Simmons said, ““just never to Democrats.”” (*Id.*) Simmons is aiming to double the amount he has already donated to super PACs by November 2012. (*Id.*)

77. In February 2012, comedian and television host Bill Maher, 56, contributed \$1 million to a super PAC supporting the reelection of President Barack Obama. (Nicholas Confessore & Michael Luo, *Obama Campaign Fears Uphill Climb Raising ‘Super PAC’ Money*, N.Y. Times, Mar. 13, 2012, <http://www.nytimes.com/2012/03/14/us/politics/obama-campaign-fears-uphill-climb-raising-super-pac-money.html?pagewanted=all>, FEC Exh. 41.) Maher said he contributed the money “to try to throw a snowball and create an avalanche among rich people on the left.” (*Id.*)

78. In January 2012, billionaire casino magnate Sheldon Adelson, 78, and his wife contributed \$10 million to a super PAC supporting the presidential candidacy of Newt Gingrich. (Molly Ball, *Who is Sheldon Adelson, the Gingrich Super PAC’s Billionaire Backer?*, The Atlantic, Jan. 25, 2012, <http://www.theatlantic.com/politics/archive/2012/01/who-is-sheldon-adelson-the-gingrich-super-pacs-billionaire-backer/252003/>, FEC Exh. 42.)

79. Multi-millionaire mutual-fund investor Foster Friess, 71, was the chief financial supporter of a super PAC supporting the 2012 presidential campaign of Rick Santorum. (Jim Rutenberg & Nicholas Confessore, *A Wealthy Backer Likes the Odds on Santorum*, N.Y. Times, Feb. 8, 2012, <http://www.nytimes.com/2012/02/09/us/politics/foster-friess-a-deep-pocketed-santorum-super-pac-backer.html>, FEC, Exh. 43.) When asked why he has contributed so much money, Friess responded that “[i]f I put up a million bucks or whatever, it doesn’t seem like much of a sacrifice” in contrast to the sacrifices that members of the armed forces have made.

(*Id.*)

80. Donors gave soft-money donations to national party committees when they were permitted because the unlimited nature of those donations made them “more effective for obtaining access to federal officials than several small federal contributions,” which are limited by FECA. (*McConnell*, 251 F. Supp. 2d at 506-07 (Kollar-Kotelly, J.)) This principle also applies to the larger hard money contributions that parties can collect compared with what candidates may receive. For example, one lobbyist advised clients that

[i]f you want to get to know Members of Congress, or new Members of Congress, it is more efficient to write a \$15,000 check to the DSCC and to get the opportunity to meet them at the various events than it would be to write fifteen \$1,000 checks to fifteen different Senators, or Senators and candidates.

(*Id.* at 507 (quoting Hickmott Decl., Exh. A. ¶ 47 [DEV 6-Tab 19]).)

81. Similarly, a former political consultant and chief executive officer of a technology company testified: “[Soft money donors] get a level of attention that a \$1,000 hard money donor never will. Even someone who wrote 25 \$1,000 hard money checks but no soft money is going to get much less attention and appreciation than someone who wrote one large soft money

check.’’ (*McConnell*, 251 F. Supp. 2d at 472 n.46, 507 (Kollar-Kotelly, J.) (quoting Randlett Decl. at 13 [DEV 8-Tab 32]).)

82. National party committees ‘‘put a premium on raising and spending soft money to advance the election prospects of their candidates.’’ (*McConnell*, 251 F. Supp. 2d at 817 (Leon, J.) (quoting Mann Expert Report at 23 [DEV 1-Tab 1])). ‘‘Since the amount of soft money that an individual, corporation or other entity [could] contribute ha[d] no limit, soft money ha[d] become the favored method of supplying political support,’’ and begat ‘‘both access to lawmakers and membership in groups which provide[d] ever greater access and opportunity to influence.’’ (*McConnell*, 251 F. Supp. 2d at 493 (Kollar-Kotelly, J.) (quoting Affidavit of Daniel H. Murray in *Mariani v. U.S.*, No.3:CV-1701 (M.D. Pa.) ¶ 14 [DEV 79-Tab 59]).)

## **2. Bequests Can Be Vehicles for Very Large Donations, Including Donations to National Party Committees**

83. In 2007, individuals bequeathed \$23.15 billion to U.S. charities, and in 2008, seven of the 10 largest gifts to charity were given by bequest. (Brian Sagrestano, JD, CFRE, *Why You Should Promote Bequests*, Planned Giving Mentor (June 2009), <http://www.virtualgiving.com/downloads/whitepapers/promotebequests.pdf>, FEC Exh. 44.) Bequests are often the largest gifts prospective donors will make ‘‘[b]ecause this wealth is transferred at death, when the donor no longer needs it for expenses.’’ (*Id.*)

84. The LNC has received at least three bequests, including the Burrington Bequest. (Resp. to Def.’s Interrogs. at No. 15, FEC Exh. 5.) All three bequests were significantly larger than the LNC’s median donation of approximately \$25. (See 30(b)(6) Dep. at 54:6-21, FEC Exh. 20.) Upon his death in 2007, Burrington bequeathed \$217,734 to the LNC; yet during his lifetime, he contributed \$25 once, in 1998. (Resp. to Def.’s Interrogs. at Nos. 11, 15, FEC Exh. 5.) Joseph A. Reitano bequeathed \$19,331.40 to the LNC in February 2010 and James Kelleher

bequeathed \$10,000 to the LNC in April 2009. (Resp. to Def.'s Interrogs. at No. 15, FEC Exh. 5; E-mail from Robert Kraus, Director of Operations, LNC, to William Redpath, Chair, LNC (Feb. 17, 2010 4:46pm), FEC Exh. 45; E-mail from Robert Kraus, Director of Operations, LNC, to Louise Calise, Direct Marketing Manager, LNC (Apr. 27, 2009 10:46am), FEC Exh. 46; Bank Check from the Estate of James Casey Kelleher to Libertarian National Committee (Apr. 22, 2009), FEC Exh. 47.) But neither of those persons has any reported contributions to the LNC during his lifetime.

85. Over the last several years, individuals have bequeathed very large amounts of money to non-profit organizations. For example, in 2005, the National Rifle Association received a \$1 million bequest from a member and donor. (*Traditions, A Publication of the NRA Foundation* (Spring 2005) at 24, <http://www.nrafoundation.org/traditions/graphics/spring05.pdf>, FEC Exh. 48.) And in 2003, philanthropist Joan Kroc bequeathed more than \$200 million to National Public Radio (Press Release, NPR, *NPR Receives a Record Bequest of More Than \$200 Million* (Nov. 6, 2003), <http://www.npr.org/about/press/031106.kroc.html>, FEC Exh. 49), an amount almost double its then-annual budget (Mike Janssen, *Kroc's \$200 Million Gift Freed Pubradio's Dreams*, Current (Nov. 17, 2003), <http://www.current.org/npr/npr0309kroc.shtml>, FEC Exh. 50). Philanthropists recognize that there is potential to raise great sums of money via bequests. For example, in 2009, Bill Gates and Warren Buffet started an effort to convince the 400 wealthiest Americans to pledge "at least 50% of their net worth to charity during their lifetimes or at death." (Carol J. Loomis, *The \$600 Billion Challenge*, Fortune (Jun. 16, 2010), <http://features.blogs.fortune.com/2010/06/16/gates-buffett-600-billion-dollar-philanthropy-challenge/>, FEC Exh. 51.)

86. Many non-profit organizations have sophisticated planned-giving programs that solicit bequests and other forms of planned giving, such as the National Rifle Association (National Rifle Association, Planned Giving Guide, [http://nrahq.giftlegacy.com/org\\_files/170/pdf/PGBrochure.pdf](http://nrahq.giftlegacy.com/org_files/170/pdf/PGBrochure.pdf), FEC Exh. 52; *see also* NRA, Ring of Freedom, <http://nrahq.giftlegacy.com/> (last visited May 1, 2012)), the Nature Conservancy (Gift & Estate Planning, The Nature Conservancy, <http://www.nature.org/gift-planning/index.htm> (last visited Apr. 23, 2012)), the American Civil Liberties Union (Gifts From Your Will or Trust, ACLU, <http://www.aclu.planyourlegacy.org/GIFTbequest.php> (last visited Apr. 23, 2012)), FEC Exh. 53), and the NAACP Legal Defense Fund (Estate Planning, NAACP, <http://www.naacpldf.org/estate-planning> (last visited Apr. 23, 2012)), FEC Exh. 54). Planned-giving consultants advise groups looking to increase their fundraising on how to more effectively solicit bequests. (*See, e.g.*, PlannedGiving.com, <http://www.plannedgiving.com/> (last visited Apr. 23, 2012); Partnership for Philanthropic Planning, <http://www.pppnet.org/> (last visited Apr. 23, 2012); Changing Our World, Inc., <http://www.changingourworld.com/> (last visited Apr. 23, 2012); Alexander Macnab & Co., <http://www.alexandermacnab.com/> (last visited Apr. 23, 2012).)

**3. When National Party Committees Were Permitted to Collect Soft-Money Donations, Estates Could Donate the Entire Amount of a Large Bequest to the Committees in One Lump Sum**

87. Estates have contributed more than \$2.7 million in bequeathed funds to candidates, national party committees, and other political committees, according to FEC records dating from 1978 through December 13, 2011. (Clark Decl. ¶¶ 1-2, 6 & Table 1, FEC Exh. 2.) The actual amount of contributed bequeathed funds is likely even higher, because contribution recipients are not required to inform the FEC that a contribution they received came from a bequest, and if they choose to do so anyway, they are not required to report this information in

any standardized manner. (*Id.* ¶¶ 2-4 & Exhs. A-D.) As a result, bequests are likely underreported to the FEC. (*Id.*)

88. Of the more than \$2.7 million that estates have contributed from bequeathed funds from 1978 to 2011 based on FEC records, more than \$2.26 million has been contributed to national party committees. (Clark Decl. ¶ 10 & Table 3, FEC Exh. 2.) The DNC has received more than \$1.03 million of that amount in 55 contributions; the RNC has received more than \$874,000 in 83 contributions; the LNC has received more than \$195,000 in 12 contributions; and the Green Party of the United States has received more than \$101,000 in five contributions. (*Id.* ¶ 12 & Table 4.)

89. Before BCRA banned soft-money donations to national party committees in 2002, the committees could accept the full amount of a bequest from an estate so long as the committees designated the amount in excess of FECA's contribution limit as soft money — that is, funds purportedly to be used for non-federal-election purposes. (Clark Decl. ¶ 8, FEC Exh. 2.)

90. As a result, when soft-money donations to national party committees were legal, estates were able to donate the entire amount of a large bequest in one lump sum. For example, in 2002, the Estate of Martha Huges donated \$390,000 from a bequest to the DNC. (Clark Decl. ¶ 7 & Table 2, FEC Exh. 2.) In 1999, the Estate of Lola Cameron donated \$141,988 from a bequest to the RNC. (*Id.*) In 1997, the Estate of Gwendolyn Williams donated \$133,829 from a bequest to the DNC. (*Id.*) And in 2002, the Estate of Joan Shepard donated \$80,000 to the RNC. (*Id.*)

91. Of the more than \$2.26 million that all national party committees received in reported contributions of bequeathed funds from 1978 to 2011, more than \$1.32 million

consisted of hard-money contributions subject to FECA's limits. (Clark Decl. ¶ 10 & Table 3, FEC Exh. 2.) Estates gave national party committees this amount in 147 separate contributions, all of which had to comply with FECA's applicable limit. (*Id.*) As a result, the average hard-money contribution from a bequest was \$9,041.09. (*Id.* ¶ 11.) In contrast, during the pre-BCRA era when national party committees could accept soft money, estates donated more than \$931,000 from bequests in just 15 separate donations to the national party committees. (*Id.* ¶ 10 & Table 3.) These soft-money donations of bequeathed funds averaged \$62,117.23. (*Id.* ¶ 11.)

92. Based on data reported to the FEC from 1978 to 2011, the average soft-money donation from a bequest to the RNC was \$38,728.35 (10 donations), while the average hard-money contribution of bequeathed funds was \$6,669.42 (73 contributions). (Clark Decl. ¶ 13 & Table 4, FEC Exh. 2.) The average soft-money donation from a bequest to the DNC was \$135,957.25 (four donations) while the average hard-money contribution of bequeathed funds was \$9,637.15 (51 contributions). (*Id.*) In contrast, the RNC reported in 2009 that the average contribution it receives is \$42. (*Conservative Conversation*, GOP.com, Oct. 2009, [http://www.gop.com/index.php/blog/comments/conservative\\_conservation1/](http://www.gop.com/index.php/blog/comments/conservative_conservation1/), FEC Exh. 55.) And in the fourth quarter of 2011, President Obama and the DNC received an average donation of \$55. (Stephanie Condon, *Obama Campaign, DNC Bring in \$68M in Fourth Quarter*, CBSNews.com, Jan. 12, 2012, [http://www.cbsnews.com/8301-503544\\_162-57357707-503544/obama-campaign-dnc-bring-in-\\$68m-in-fourth-quarter/](http://www.cbsnews.com/8301-503544_162-57357707-503544/obama-campaign-dnc-bring-in-$68m-in-fourth-quarter/), FEC Exh. 56.)

**4. Since BCRA Banned Soft Money Donations to National Party Committees, Estates Have Contributed Funds From Large Bequests to the Committees in Annual Amounts That Comply with FECA's Contribution Limits**

93. After BCRA banned soft money donations to national party committees, all bequeathed funds received by those committees were required to comply with FECA's annual contribution limit found at 2 U.S.C. § 441a(a)(1)(B). (Clark Decl. ¶¶ 8-9, FEC Exh. 2.) Therefore, since BCRA, when a person has bequeathed money to a national party committee in an amount in excess of FECA's annual limit, the excess funds typically have been held by the estate or by a third party, such as a trustee or escrow agent, which has then contributed annual amounts to the national party committee that comply with FECA's limit. (FEC Advisory Op. 2004-02, FEC Exh. 8; Clark Decl. ¶ 9 & Exhs. C-D, FEC Exh. 2; Compl. ¶¶ 14-16 (Docket No. 13.).) When the recipient of a contribution made by an estate reports the contribution to the FEC, the report need not state that the contribution was made from a bequest (Clark Decl. ¶ 9, Exhs. C-D, FEC Exh. 2.), but documents obtained from national party committees show that many bequests of amounts far exceeding FECA's annual contribution limit, like the Burrington bequest, have been left for national party committees in recent years.

94. For example, in 2009, Ron Gabriel bequeathed \$200,000 to the DNC. (Letter from Lisa R. Saunders, Senior Trust Officer, Chevy Chase Trust, to Ann Marie Habershaw, Chief Operations Officer, Democratic National Committee (Jun. 16, 2010), FEC Exh. 57.) Gabriel's trust contributed a FECA-compliant \$30,400-portion of the bequest to the DNC in June 2010, and then the remaining \$169,600 was to be placed in an account, from which the trustee would "issue a check for the maximum annual distribution amount to the [DNC] until the funds have been completely distributed." (*Id.*)

95. In 2008, Eleanor Schwarz bequeathed \$574,432.33 to the RNC (Clark Decl. ¶ 9 & Exh. C, FEC Exh. 2) — an amount more than 18 times larger than FECA’s current annual contribution limit of \$30,800 (*see supra* ¶ 4). The RNC and the Schwarz estate created an irrevocable trust to hold the bequest and to “pay the maximum amount of the trust principal to the RNC as is permitted by the Federal Election Code, on an annual basis.” (Schwarz Trust Agreement at 3, FEC Exh. 18.)

96. In 2008, Michael P. Buckley bequeathed \$200,000 to the DNC. (Milman Letter at DNC 000296, FEC Exh. 19.) A trustee contributed \$28,500 from that bequest to the DNC in 2008, and the balance was placed in a segregated account “for future delivery to the DNC as allowable by the legal limits applicable from year to year.” (*Id.*)

97. In 2008, Gladys Innerst bequeathed \$267,595.41 to the DNC, and the Innerst Trust contributed \$28,500 of that amount to the DNC. (Schedule of Proposed Distribution for Innerst Trust and Bank Check (July 1, 2008) at DNC 000921, DNC 000923, FEC Exh. 58.)

98. In 2008, Margaret Klackowski bequeathed over \$216,000 to be split evenly between the DNC and the New Jersey Democratic Party. (Letter from Amanda LaForge, Chief Counsel, Democratic National Committee, to Honorable Margaret Mary McVeigh, Superior Court of New Jersey (Jun. 18, 2008), FEC Exh. 59.) The DNC informed a New Jersey probate court that the Klackowski estate would need to transfer the bequest to a trust, which “would then be responsible for the disbursement of funds - \$28,500 until all of the funds have been disbursed.” (*Id.*)

99. In 2005, Joseph P. Kramer III bequeathed approximately \$190,400 to the DNC. (Letter from Clifford H. Tall, Attorney, to Amanda LaForge, Democratic National Committee (Sept. 8, 2009), FEC Exh. 60.) In November 2009, the Kramer estate contributed \$30,400 of the

bequest to the DNC, in compliance with FECA's limit, while the balance of the bequest remained in an annuity. (*Id.*)

100. In 2005, Harold E. Schooler bequeathed \$250,000 to the DNC. (Letter from Megan Hedman, Esq., Compliance Director, to John T. Trevino, Attorney (Aug. 1, 2005), FEC Exh. 61.) That year, the Schooler estate made a \$26,700 contribution to the DNC. (DNC FEC Form 3X, Schedule A at B (Oct. 20, 2005), <http://images.nictusa.com/cgi-bin/fecimg/?25971502909>, FEC Exh. 62.)

101. In 2001, Lakshmi Bulusu bequeathed more than \$100,000 to the Democratic Party. (Letter from John M. Power, Attorney, Power Law Firm LLP, to Senator Frank R. Lautenberg, Democratic Party (National) (May 5, 2009) at DNC 000441, FEC Exh. 63.) In 2010, the Bulusu Living Trust contributed \$30,400 from that bequest to each of the Democratic Party's national party committees — the DNC, the DCCC, and the DSCC — for a total of \$91,200 in contributions. (*Id.* at DNC 000443-47.)

**5. If Bequeathed Contributions Were Unlimited, the LNC Would Direct More Effort to Soliciting Bequests and Would Accept Bequests of Any Size for Use in Federal Elections**

102. The LNC's claim in this case is that all national party committees should be permitted to accept unlimited bequeathed contributions from estates and to use that money not only for non-federal election purposes, but also to influence federal elections. (Compl. ¶ 15 (Docket No. 13); FEC's First Disc. Reqs. at RFA No. 7, FEC Exh. 3; LNC's Resp. to FEC's RFAs ¶ 7, FEC Exh. 4.)

103. If FECA no longer placed limits on contributions resulting from bequests, the LNC would accept a bequest of any size in one lump sum. (LNC 30(b)(6) Dep. at 71:4-10, FEC Exh. 20.) A single "large bequest that [the LNC] could accept at once could make a major

difference in the operations of the [LNC].” (*Id.* at 70:2-4.) For example, the Burrington bequest of more than \$217,000 amounted to approximately one-sixth of the LNC’s entire 2010 operating budget. (*Id.* at 70:19-21.) And according to the LNC, it “would be wonderful” if it received a million dollar bequest, which would be nearly the size of its entire 2010 operating budget. (*Id.* at 70:7-15; 71:8-10.)

104. Given this potential for raising large sums, the LNC would direct more effort to soliciting bequests if they were no longer subject to FECA’s limits. (LNC 30(b)(6) Dep. at 69:9-71:3, FEC Exh. 20.) For instance, the LNC would implement a planned-giving program to solicit bequests exceeding FECA’s current limits. (Compl. ¶ 26 (Docket No. 13).) Among other things, that program would “solicit bequests at [the LNC’s] presidential nominating convention banquets.” (Resp. to Def.’s Interrog. No. 16, FEC Exh. 5.) The LNC would also use direct mail and personally solicit “people that [it] ha[s] reason to believe are well-to-do or reasonably so.” (LNC 30(b)(6) Dep. at 69:9-21, FEC Exh. 20.).

105. Absent FECA’s contribution limits, other national party committees would have an incentive to solicit bequests in amounts exceeding FECA’s limits as well. (FEC’s First Disc. Reqs. at RFA 10, FEC Exh. 3; LNC’s Resp. to FEC’s RFAs ¶ 10, FEC Exh. 4.)

**B. Individuals Could Obtain Access to and Influence over Federal Candidates and Officeholders in Exchange for Promising to Bequeath an Unlimited Contribution to a National Party Committee**

106. If a national party committee could solicit individuals to leave bequests of unlimited amounts, in exchange the party could grant the individuals preferential access to one or more of its federal officeholders or candidates. (FEC’s First Disc. Reqs. at RFA No. 9, FEC Exh. 3; LNC’s Resp. to FEC’s RFAs ¶ 9, FEC Exh. 4.)

107. If a national party committee discovered that an individual planned to bequeath it a contribution or donation, the national party committee could, in exchange, grant that individual preferential access to its federal candidates and officeholders. (FEC’s First Disc. Reqs. at RFA No. 8, FEC Exh. 3; LNC’s Resp. to FEC’s RFAs ¶ 8, FEC Exh. 4.)

108. An individual can revoke a bequest before death, and, as the LNC admits, this possibility creates an incentive for a national party committee to limit the risk that a planned bequest will be revoked. (FEC’s First Disc. Reqs. at RFA No. 12, FEC Exh. 3; LNC’s Resp. to FEC’s RFAs ¶ 12, FEC Exh. 4.) To make a revocation less likely, a national party committee could grant an individual who has promised the national party committee a bequest preferential access to its officeholders or candidates. (FEC’s First Disc. Reqs. at RFA No. 13, FEC Exh. 3; LNC’s Resp. to FEC’s RFAs ¶ 13, FEC Exh. 4.)

109. The LNC could grant someone membership in one of its major-donor groups, such as the Chairman’s Circle, if the person showed the LNC his or her will providing for a bequest large enough to qualify for membership (LNC 30(b)(6) Dep. at 49:17-50:14, FEC Exh. 20), or if the person threatened to revoke such a bequest (*id.* at 67:11-68:4).

110. If individuals informed the LNC that they intended to leave the LNC a bequest upon death, the LNC would be thankful to them for “possibly leaving a gift for us some day,” since the LNC “need[s] more money.” (LNC 30(b)(6) Dep. at 66:4-20, FEC Exh. 20.) And the LNC would be grateful to these potential future donors for the possible contributions even though the donors could revoke their bequests before death, because “[t]here would only be upside there, so to speak.” (*Id.* at 66:21-67:6.)

111. Organizations that solicit bequests sometimes offer membership in recognition societies and access to special events to thank and reward donors who have agreed to leave the

organizations bequests. (Establishing a Planned Giving Program, The Center on Philanthropy at Indiana University, [http://www.philanthropy.iupui.edu/TheFundRaisingSchool/PrecourseReadings/precourse\\_establishingaplannedgivingprogram.aspx](http://www.philanthropy.iupui.edu/TheFundRaisingSchool/PrecourseReadings/precourse_establishingaplannedgivingprogram.aspx) (last visited Apr. 23, 2012), FEC Exh. 64.) A recognition society gives an organization a way to “attempt to begin building personal relationships with those donors,” to “provide an opportunity to obtain details about their planned gift commitments, [and to] create an opportunity to convert revocable arrangements, like bequests, into irrevocable commitments.” (*Id.*)

112. The National Rifle Association (“NRA”) recognizes people who are planning to leave a bequest by granting them membership in its recognition society called the “[NRA] Heritage Society.” (National Rifle Association, Planned Giving Guide at 13, [http://nrahq.giftlegacy.com/org\\_files/170/pdf/PGBrochure.pdf](http://nrahq.giftlegacy.com/org_files/170/pdf/PGBrochure.pdf), FEC Exh. 52.) The NRA encourages future donors to notify the NRA of their bequest so “NRA staff [can] welcome you into the Heritage Society and thank you for taking this important step.” (*Id.*) Those who provide the NRA with a copy of their will demonstrating their future gift to the NRA are “awarded Ambassador Membership in the Heritage Society and receive a special gift and invitations to members only events.” (*Id.*; *see also* Estate Planning/Heritage Society, The NRA Foundation, [http://www.nrafoundation.org/giving/planned\\_giving.asp](http://www.nrafoundation.org/giving/planned_giving.asp) (last visited May 1, 2012).)

113. Similarly, the Nature Conservancy solicits bequests by informing potential donors that they “can become a member of The Legacy Club by naming the Nature Conservancy in [their] will or estate plan[.]” (The Legacy Club, The Nature Conservancy, <http://www.nature.org/gift-planning/legacy-club/index.htm> (last visited Apr. 23, 2012).) The Legacy Club is the Nature Conservancy’s way to “recognize this profound contribution to The Nature Conservancy’s future” (*id.*), and as a member, future donors “get special invites and

opportunities to protect important wildlife habitats near you.” (Share Your Bequest with the Conservancy, The Nature Conservancy, <http://my.nature.org/forms/bequest.html> (last visited Apr. 23, 2012).)

114. The Kennedy Center established a “Legacy Society” to “celebrate and thank those individuals” who have left a bequest for the Kennedy Center. (Legacy Society, The Kennedy Center, <http://www.thekennedycenterinc.org/giving/planned-giving/legacy-society/legacy-society.html> (last visited Apr. 23, 2012).) Legacy Society members are “recognized in our publications and on our web site,” and “[a]s another way to show our appreciation, Legacy members will be able to attend our annual Endowment Event as our special guests.” (*Id.*)

**C. National Party Committees Could Grant a Decedent’s Friends, Family, or Associates Access to the Party’s Federal Candidates and Officeholders in Exchange for a Large Bequest**

115. Individuals who donate substantial sums to influence federal elections often have like-minded family members, friends, and associates. For example, George Soros, 81, one of the world’s richest men, stated in 2003 that if he could have traded his entire \$7 billion fortune to defeat then-President George W. Bush he would have if “someone guaranteed” it would work. (Laura Blumenfeld, *Soros’s Deep Pockets vs. Bush; Financier Contributes \$5 Million More in Effort to Oust President*, Wash. Post, Nov. 11, 2003, at A03, FEC Exh. 65.) Instead, Soros, along with a business partner, pledged \$15.5 million to liberal activist groups, including MoveOn.org, working against President Bush’s reelection. (*Id.*) More recently, Soros’s son, Alexander Soros, donated \$200,000 to the Jewish Council for Education and Research, a super PAC supporting President Obama. (Becket Adams, *Soros’ Son Donates \$200K to Pro-Obama Jewish PAC*, TheBlaze.com, Apr. 24, 2012, <http://www.theblaze.com/stories/soros-son-donates-200k-to-pro-obama-jewish-pac/>.)

116. On April 26, 2012, a political group called Americans for Prosperity, founded by billionaire oil industry brothers Charles Koch, 76, and David Koch, 71, announced that it is “set to spend \$6.1 million on a new television ad targeting President Barack Obama in eight states.”

(*Conservative-Leaning Group Tied to Koch Brothers Launches \$6.5 Million Anti-Obama TV Ad*, Washingtonpost.com, Apr. 26, 2012, [http://www.washingtonpost.com/national/conservative-leaning-group-tied-to-koch-brothers-launches-65-million-anti-obama-tv-ad/2012/04/26/gIQAdYfojT\\_story.html](http://www.washingtonpost.com/national/conservative-leaning-group-tied-to-koch-brothers-launches-65-million-anti-obama-tv-ad/2012/04/26/gIQAdYfojT_story.html), FEC Exh. 66.)

117. Family, friends, and estate and trust administrators of a decedent who has left a bequest for a national party committee sometimes take a strong interest in how the party spends the bequest, and they may request that the funds be used to influence specific federal elections. For example, in 2010, the trustee of a trust holding a \$200,000 bequest to the DNC wrote a letter to the then-chair of the DNC stating:

Due to the fact that mid-term elections are upon us, I [am] working to get this [contribution from the decedent’s bequest] out to you as quickly as possible. I know it would be important to my friend, Michael Buckley, who we called “Buckley.” Of course I cannot speak with him, as he is deceased, but both of us were kindred spirits with regard to our political views and had many, many discussions on politics. As you can see by the fact that he left the [DNC] 25% of his estate, it was a very important thing to him. While I believe he would want you to use the money in the way you think best, it is my heartfelt belief that he would want this year’s money going towards defeating Carly Fiorina and Meg Whitman in California. Buckley was a former employee of Hewlett Packard under the reigns of Carly Fiorina and he was not silent with regard to how he felt about her. I think he would be actively campaigning against her and Meg Whitman, if he were alive today.

(Milman Letter at DNC 000297, FEC Exh. 19.) The trustee then asked the DNC to let her know if the money would in fact be used to help defeat Fiorina and Whitman, because the decedent’s “friends would be pleased to know.” (*Id.*)

118. Similarly, associates of a decedent who has left a bequest for a national party committee may inform specific federal officeholders or candidates of the bequest, just as major donors did during the soft-money era. In 2009, an attorney representing the co-trustees of a trust holding a bequest of over \$100,000 for the Democratic Party wrote a letter to United States Senator Frank Lautenberg informing him of the bequest. (Letter from John M. Power, Attorney, Power Law Firm LLP, to Senator Frank R. Lautenberg, Democratic Party (National) (May 5, 2009) at DNC 000441-42, FEC Exh. 63.) The attorney stated that his “good friend and accountant” who “had interactions with [the Senator] in his role as a director of Holy Name Hospital” suggested that he alert the Senator to the bequest. (*Id.* at DNC 000441.) The attorney sent Senator Lautenberg a copy of the trust documents and in doing so highlighted the fact that the bequest was for more than \$100,000. (*Id.* at DNC 000441-42.) Likewise, in the soft-money era, donors were advised to send their unlimited soft-money donations for a party to a member of Congress first, so that the member would be aware of the donor’s generosity to his or her party. (*McConnell*, 251 F. Supp. 2d at 784 (Leon, J.) (citing Hickmott Decl. ¶ 9 [DEV6-19]).)

119. National party committees appreciate large donations and ordinarily ““feel inclined to reciprocate”” (*McConnell*, 540 U.S. at 147 (alteration in original) (quoting *McConnell*, 251 F. Supp. 2d at 493 (Kollar-Kotelly, J.) (quoting Rozen Decl. ¶ 14 [DEV 8-Tab 33])), and that is also the case for large bequests. In April 2009, the LNC learned that it was to receive a \$10,000 bequest from the estate of James Kelleher. (E-mail from Robert Kraus, Director of Operations, LNC, to Louise Calise, Direct Marketing Manager, LNC (Apr. 27, 2009 10:46am), FEC Exh. 46.) Upon learning of the bequest in an email, the LNC’s then-national chair asked, “Whom do we thank?,” even though Kelleher was deceased. (*Id.* at 2.) According to the LNC, in the case of a bequest it “would be reasonable to thank anybody who was helping

to [e]ffect the donation” to the LNC, including “[p]ossibly the executor. Possibly the estate administrator or the estate attorney.” (LNC 30(b)(6) Dep. at 58:6-13, FEC Exh. 20.) As the LNC sees it, “[s]omebody is doing something to give \$10,000 to the [LNC], even if a penny is not coming out of their pocket, it is not inappropriate and mighty inexpensive to say thank you.” (*Id.* at 58:14-18.) For the Kelleher bequest, the LNC’s director of operations directed a colleague to send a thank you note to the executor of the Kelleher estate. (E-mail from Robert Kraus, Director of Operations, LNC, to Louise Calise, Direct Marketing Manager, LNC (Apr. 27, 2009 10:46), FEC Exh. 46.)

120. Redpath, testifying on behalf of the LNC, stated that upon receiving a bequest for the LNC, “I would guess I would ask that the family be thanked, if I had responsibility for it,” because it is “[b]etter to err on the side of thanking than not, I guess.” (LNC 30(b)(6) Dep. at 63:13-64:12, FEC Exh. 20.) “I think to be a decent person and to have them think better of the [LNC] and the Libertarian Party, I would want it to be done.” (*Id.* at 64:15-18.).

121. In February 2010, the LNC discovered that it was to receive a bequest from Joseph A. Reitano that could be valued up to \$126,700. (E-mail from Robert Kraus, Director of Operations, LNC, to William Redpath, Chair, LNC (Feb. 17, 2010 4:46pm), FEC Exh. 45.) The LNC has a database containing the names of its members and donors (LNC 30(b)(6) Dep. at 59:14-21, FEC Exh. 20), and the LNC’s operations director researched whether any of Reitano’s family members had been previous donors to the LNC (Federal Rule of Civil Procedure 30(b)(6) Deposition of LNC witness Robert Kraus at 21:15-18, FEC Exh. 67). He conducted this search because usually if the LNC “receive[s] a gift we would send a thank you letter to someone.” (*Id.* at 22:2-4.). The operations director discovered that Reitano’s son, Tom Reitano, was “a one time \$25 subscriber” to the LNC, but his father and mother could not be found in the LNC database.

(E-mail from Robert Kraus, Director of Operations, LNC, to William Redpath, Chair, LNC (Feb. 17, 2010 4:46pm), FEC Exh. 45.)

122. Reitano's bequest to the LNC ultimately amounted to \$19,331.40. (Resp. to Def.'s Interrogs. at No. 15, FEC Exh. 5.) Had Reitano contributed that amount to the LNC while alive, he would have qualified for membership in the LNC's Chairman's Circle major-donor group, which today offers preferential access to the LNC's presidential nominee and other federal candidates. (LNC Policy Manual at 33, FEC Exh. 32.) Had Reitano's son asked, the LNC could have allowed him to become a member of the Chairman's Circle in his father's place. (LNC 30(b)(6) Dep. at 65:1-17, FEC Exh. 20.) The LNC has no rules that would bar such a substitution. (*Id.* at 65:16-17.)

**D. Those Leaving Bequests to National Party Committees May Want the Funds to Be Used for Specific Purposes, and Committees Could Help Those Donors Circumvent the Limits on Individual Contributions to Federal Candidates**

123. During the soft-money era, national party committees were able to informally steer donations they received to benefit particular federal candidates (*McConnell*, 251 F. Supp. 2d at 822 (Leon, J.) (citing Simpson Decl. ¶ 7 [DEV 9-Tab 38])), and the committees could similarly use funds received as a result of large bequests for specific candidates, at the suggestion of the decedent or someone associated with the decedent.

124. Individuals leaving bequests for national party committees, and those associated with those individuals, have attempted to influence how national party committees spend bequeathed funds towards particular candidates. In October 2010, a trustee in charge of a \$200,000 bequest left for the DNC asked the DNC's then-chair to use a contribution from that bequest in order to defeat Republican candidate for U.S. Senate Carly Fiorina, who was running

against Democratic incumbent Barbara Boxer, because it would have been consistent with the decedent's wishes. (Milman Letter at DNC 000297, FEC Exh. 19.)

125. Similarly, Arne Magnussen bequeathed 85 percent of her estate to the DNC, but only for the purposes of increasing voter registration and stopping voter fraud in states that would have the greatest positive impact for a Democratic candidate for president. (Magnussen Trust Exhibit B Disposition of Remaining Trust Estate, FEC Exh. 68.)

**E. Donors Have Made Bequests That Resulted in Contributions Directly to Federal Candidates, and if LNC's Claim in This Case Were Accepted, Such Contributions Would Also Be Unlimited**

126. Although in this case the LNC challenges only FECA's limits on contributions from individuals to national party committees (2 U.S.C. §§ 441a(a)(1)(B), 441i(a)) as applied to bequests, the LNC states that "the rationale underlying [its] case could extend to other bequests" such as bequests to candidates and their authorized political committees (*id.* § 441a(a)(1)(A)) and state political party committees (*id.* § 441a(a)(1)(D)), among others. (FEC's First Disc. Reqs. at RFA Nos. 1-2, FEC Exh. 3; LNC's Resp. to FEC's RFAs ¶¶ 1-2, FEC Exh. 4.)

127. Individuals have bequeathed contributions directly to federal candidates and their authorized political committees. (Clark Decl. ¶ 14 & Table 5, FEC Exh. 2.) Such contributions are subject to FECA's limit on contributions to "any candidate and his authorized political committees" (2 U.S.C. § 441a(a)(1)(A)), which currently stands at \$2,500 per election (Price Index Adjustments for Contribution and Expenditure Limits and Lobbyist Bundling Disclosure Threshold, 76 Fed. Reg. 8368-70 (Feb. 14, 2011)).

128. From the time the Commission started keeping records in 1978 until the end of 2011, 180 contributions of bequeathed funds from estates to federal candidates, totaling \$79,511.35, have been reported. (Clark Decl. ¶ 14 & Table 5, FEC Exh. 2.) For example, Gilda

J. Hardtke bequeathed \$5,000 to the DNC and \$3,000 to the “Hillary Clinton Election Committee.” (Hardtke Trust Declarations at DNC 000484, FEC Exh. 69.) Similarly, Mary Katherine Frinks bequeathed 20 percent of her estate to “Barack Obama’s campaign fund.” (Last Will and Testament of Mary Katherine Frinks (Dec. 21, 2007) at DNC 000606, FEC Exh. 70.) Gladis Innerst bequeathed shares of her residuary estate to “SENATOR ALAN CRANSTON, if he is still a member of the United States Senate,” (Trust Agreement, Gladis Innerst (Oct. 1, 1990) at DNC 000880, FEC Exh. 71), and to “CONGRESSMAN GEORGE BROWN, if he is a member of the House of Representatives of the United States Congress at the time of the Trustor’s death.” (Amendment to the Gladis Innerst Trust of Oct. 1, 1990 (Jan. 30, 1996) at DNC 000894, FEC Exh. 72)).

**V. The Risk of Corruption and Its Appearance Resulting from Unlimited Contributions Is Present Even When the Recipient Is the National Party Committee of a Minor Political Party like the LNC**

**A. The LNC Fields Hundreds of Candidates for Federal Office and Aspires to be a Major Party**

129. “[M]inor-party candidates may win elective office[.]” (*McConnell*, 540 U.S. at 158-59 (quoting *Buckley v. Valeo*, 424 U.S. 1, 34-35 (1976) (*per curiam*)).

130. The LNC “aspire[s] to be a major party in the United States.” (LNC 30(b)(6) Dep. at 11:2-5, FEC Exh. 20.) It is the LNC’s mission is to “move public policy in a Libertarian direction by . . . nominating candidates for political office that are Libertarian and trying to get them elected.” (*Id.* at 9:17-10:1.) And thus, it is the LNC’s goal to “have a Libertarian president and a Libertarian Congress and Libertarians elected to governorships and state general assemblies, state legislatures.” (*Id.* at 10:6-17.) As the LNC told a donor in 2003: “We are in the business of winning elections.” (Letter from Joe Seehusen, Executive Director, LNC, to Dr. Charles E. Test (July 17, 2003), FEC Exh. 22.)

131. The LNC now considers itself the “number one . . . minor party in the United States.” (LNC 30(b)(6) Dep. at 13:3-8, FEC Exh. 20.) The LNC is on the ballot in more states, runs more candidates, and raises more funds than the other minor parties. (*Id.* at 13:9-12.) The LNC is the third largest political party, behind the Democratic and Republican Parties, and the LNC is active in all 50 states, with more than 250,000 registered voters. (*Frequently Asked Questions*, Libertarian Party, <http://www.lp.org/faq> (last visited May 1, 2012), FEC Exh. 73.)

132. In any one election cycle, the Libertarian Party typically fields “[n]orth of 200” candidates for federal office. (LNC 30(b)(6) Dep. at 16:5-7, FEC Exh. 20.) In November 2010, over 800 Libertarian candidates ran for federal, state, and local offices. (*Our History*, Libertarian Party, <http://www.lp.org/our-history> (last visited Apr. 20, 2012), FEC Exh. 23.)

133. “[I]n five of the last six federal elections, 2000 through 2010 inclusive, the exception being 2006, [the LNC’s] candidates for U.S. House of Representatives collectively earned more than one million votes in five out of six of those elections. The last time a minor party, a party other than Democrats and Republicans, did that was in 1912.” (LNC 30(b)(6) Dep. at 13:16-22, FEC Exh. 20.)

134. The Libertarian Party has had “candidates for federal office who have received over 20 percent of the vote [and] possibly over 30 percent.” (LNC 30(b)(6) Dep. at 16:17-17:3, FEC Exh. 20.)

135. At least two former federal officeholders, Ron Paul and Bob Barr, held federal office as Republicans but then switched allegiances to the Libertarian Party after leaving federal office. (LNC 30(b)(6) Dep. at 17:4-14, FEC Exh. 20.)

**B. Even if a Libertarian Party Candidate Does Not Win an Election for Federal Office, That Candidate’s Presence Can Have a Substantial Impact on the Outcome of the Election**

136. “[M]inor-party candidates may . . . have a substantial impact on the outcome of an election.” (*McConnell*, 540 U.S. at 158-59 (quoting *Buckley*, 424 U.S. at 34-35).)

137. Even if a Libertarian Party candidate does not win a federal election, the LNC generally views it as positive if its candidate gets more votes than the margin of victory between the two major-party candidates and thus affects the outcome of the election. (LNC 30(b)(6) Dep. at 11:22-12:12, FEC Exh. 20.) That is because, in that case, “hopefully a candidate of a major party would listen to [the Libertarian Party’s] position and reconsider [the Libertarian Party’s] positions in the future” since the party would have demonstrated that “a sizeable percentage of the electorate . . . agrees with [the Libertarian Party] and wants to see more Libertarian public policies.” (*Id.* at 12:13-13:2.)

138. For instance, in 2004, CBS News published an article discussing whether then-President George W. Bush might face a threat to his reelection campaign from the candidacy of the Libertarian Party’s presidential nominee Michael Badnarik, since Badnarik voters might have otherwise voted for President Bush. (Executive Director’s Progress Report at 4-5, FEC Exh. 74.) Other media outlets subsequently contacted the LNC “to express interest in the ‘Libertarians can tilt the outcome’ story,” and the LNC highlighted these events in a letter soliciting prospective donors as evidence that the “Libertarian Party [was] making an impact in 2004.” (*Id.* at 5-6.)

139. In a 2006 letter to prospective Chairman’s Council members, the LNC stated that [o]ne of the most significant achievements of the year was our candidates being identified as the deciding factor in control of the U.S. Senate. This led to positive press coverage in the *Washington Post* and many other

news outlets. Our impact in these important elections even led to an article in *The Economist* titled “Libertarians Emerge as a Force.” Clearly, it was a good year for our party.

(Letter to Robert Balocca (Dec. 8, 2006), FEC Exh. 75.)

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