UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REPUBLICAN PARTY OF LOUISIANA, *et al.*,	)	
Plaintiffs,	)	Civ. No. 15-1241 (CRC-SS-TSC)
v.	)	
FEDERAL ELECTION COMMISSION,	)	REPLY
Defendant.	)	

FEDERAL ELECTION COMMISSION'S REPLY MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

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In its opening brief, the Federal Election Commission ("FEC" or "Commission") demonstrated that the Court must reject this renewed soft money challenge. Congress's regulation of political parties' "Federal election activity" ("FEA") as defined in the Bipartisan Campaign Reform Act of 2002 ("BCRA") was a landmark reform ending an era of unlimited soft money donations to political parties. Those donations led to well-documented abuses and played a key role in the "meltdown of the campaign finance system" that spurred BCRA's passage. *McConnell v. FEC*, 540 U.S. 93, 129 (2003) (internal quotation marks omitted). In *McConnell*, the Supreme Court upheld Congress's soft money reforms, including the principal provision that plaintiffs are again targeting in this lawsuit, 52 U.S.C. § 30125(b). Section 30125(b) was upheld again in *Republican Nat'l Comm. v. FEC*, 698 F. Supp. 2d 150 (D.D.C. 2010) ("*RNC*"), *aff'd*, 561 U.S. 1040 (2010), and the Supreme Court's later decisions in *Citizens United v. FEC*, 558 U.S. 310 (2010), and *McCutcheon v. FEC*, 134 S. Ct. 1434 (2014), made clear that *McConnell*'s soft money holdings remain valid. Thus, as the FEC and the amici have shown, *McConnell* and *RNC* are controlling and require the Court to reject plaintiffs' claims.

Even if they did not, the evidence in the record of the ongoing risks of actual and apparent corruption inherent in plaintiffs' proposed activities, notwithstanding their claimed "independence," is overwhelming. The record demonstrates that political parties are not like the nonconnected entities, such as independent-expenditure-only-committees ("super PACs"), addressed in the cases on which plaintiffs rely. Rather than being independent of candidates, parties are inextricably intertwined with them, as evidence about the role plaintiff Republican Party of Louisiana ("LAGOP") played in the 2014 Senate campaign of Bill Cassidy shows. Parties' special role in American politics and their inherently close relationships with candidates are the very features that make them susceptible to exploitation and that, in turn, led to the

reforms plaintiffs challenge. Accordingly, section 30125(b) regulates not just how parties' money is spent but how it is raised. Section 30125(b) is constitutional because it is very closely drawn to the government's important interests in curbing the real risks of quid pro quo corruption and its appearance. (*See* Def. FEC's Mem. in Supp. of Its Mot. for Summ. J. and in Opp'n to Pls.' Mot. for Summ. J. (Docket No. 41) ("Mem."); FEC's Statement of Material Facts Not in Genuine Dispute in Supp. of its Mot. for Summ. J. (Docket No. 42) (sealed) ("SOMF").)

In response, plaintiffs offer no basis for the Court to rule in their favor. Their claim that strict scrutiny applies to the contribution limits at issue is foreclosed by decades of precedent. Their notion that the Court is free to ignore *McConnell* and *RNC* in favor of other "currents" of case law squarely contravenes the principle that this Court must follow precedents that have direct application. And their primary answer to the extensive evidence of quid pro quo corruption here is to wave it away using the supposed "matter-of-law fact" that what they want to do poses no risk of corruption. However, that purported "matter-of-law fact" is untrue: it is a distortion of the law in the service of a losing argument with the facts — facts showing that past will surely be prologue if the soft money loophole is reopened. Plaintiffs' voluminous objections to the FEC's adjudicative and legislative facts are similarly meritless. Accordingly, if the Court concludes it has jurisdiction, it should grant summary judgment to the Commission.

ARGUMENT

I. THE COURT MUST APPLY "CLOSELY DRAWN" INTERMEDIATE SCRUTINY IN EVALUATING SECTION 30125'S CONTRIBUTION LIMITS

As explained in the FEC's opening brief, the applicable standard of scrutiny for plaintiffs' challenges to section 30125's contribution limits is "closely drawn" intermediate scrutiny. (Mem. at 20-24.) In *McConnell*, the Supreme Court explicitly considered the question and held that challenges to section 30125 should be analyzed under that standard. *Id.* at 21-22;

see also RNC, 698 F. Supp. 2d at 156 (same). The Court's conclusion reflects forty years of consistent Supreme Court jurisprudence — from *Buckley* to *McCutcheon* — holding that closely drawn scrutiny is the proper standard for contribution limit challenges like this one. (Mem. at 20-24.) Under this form of intermediate scrutiny, the government must demonstrate "a sufficiently important interest" and employ means "closely drawn to avoid unnecessary abridgement of associational freedoms." *Buckley v. Valeo*, 424 U.S. 1, 25 (1976) (per curiam).

Disputing none of this controlling authority, plaintiffs LAGOP, Jefferson Parish Republican Parish Executive Committee ("JPGOP"), and Orleans Parish Republican Executive Committee ("OPGOP") protest that there are nevertheless "sound arguments for applying strict scrutiny," arguing that the "pooling" of individual donors' funds in a political party's "[independent-contributions-only-account]" permits the "ICA" to "speak[] for its donors." (Pls.' Reply Supporting Their Summ. J. Mot. and Opp'n to FEC's Summ. J. Mot. at 9 (Docket No. 58) ("Reply").) Plaintiffs' example readily demonstrates that, in their own words, the resulting "speech . . . will be done by the ICA," not by the individual donors, yet plaintiffs claim that such "expressive association differs from *Buckley*'s description of a contribution enabling someone *else* to speak." (*Id.*) This argument refutes itself. Consequently, this Court must join the others that have rejected challengers' attempts to contort base contribution limits until they resemble expenditure restrictions that can be reviewed under strict scrutiny. Mem. at 22; *RNC*, 698 F. Supp. 2d at 156 (explaining that the plaintiffs' similar argument in that case "fl[ew] in the face of *McConnell*, which squarely held that the level of scrutiny for regulations of contributions to candidates and parties does not turn on how the candidate or party chooses to spend the money or to structure its finances"); *accord McCutcheon*, 134 S. Ct. at 1445 (declining to revisit *Buckley*'s application of "'closely drawn'" scrutiny to contribution limits).

Plaintiffs' related notion that *McCutcheon* transformed "closely drawn" scrutiny into "narrowly tailored" and functionally strict scrutiny (Reply at 9-10) is similarly meritless. In the passage plaintiffs quote (*id.* at 10), the *McCutcheon* plurality concluded that "the aggregate limits violate the First Amendment because they are not '*closely drawn* to avoid unnecessary abridgment of associational freedoms.'" 134 S. Ct. at 1456 (quoting *Buckley*, 424 U.S. at 25) (emphasis added). Contrary to plaintiffs' argument, that lesser standard of scrutiny does not call for a "'Versace'" level of "'narrow tailoring.'" *Compare* Reply at 11 (quoting *Hill v. Colorado*, 530 U.S. 703, 749 (2000) (Scalia, J., dissenting) (applying strict scrutiny)), *with McCutcheon*, 134 S. Ct. at 1444-45 (applying closely drawn scrutiny and explaining that "[e]ven a significant interference with protected rights of political association may be sustained if the [government] demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms" (internal quotation marks omitted)).

II. SECTIONS 30125(B) AND (C) ARE CONSTITUTIONAL

Direct and controlling authority requires the Court to reject plaintiffs' claims in full. Moreover, the evidence thoroughly establishes that section 30125(b) is closely drawn to serve the government's important interests in preventing quid pro quo corruption and its appearance.

A. Plaintiffs' Claims Fail Under *McConnell* and *RNC*

1. *McConnell* and *RNC* Control Here

The FEC's opening brief showed that plaintiffs' challenge to section 30125(b) must fail under *McConnell* and *RNC*. (Mem. at 25-28; *see also* Brief of Amici Curiae Public Citizen, Inc., Democracy 21, and Campaign Legal Center in Opp'n to Pls.' Mot. for Summ. J. and in Supp. of Def.'s Cross-Mot. for Summ. J. at 5-10 (Docket No. 49-2).) In *McConnell*, the Supreme Court upheld section 30125's contribution limits "regardless of how th[e] funds are ultimately used,"

540 U.S. at 155, because "[p]reventing corrupting activity from shifting wholesale to state committees and thereby eviscerating [the Federal Election Campaign Act ("FECA" or "Act")] clearly qualifies as an important governmental interest" satisfying closely drawn scrutiny. *Id.* at 165-66; *accord* Mem. Op. at 7 (Docket No. 24) (plaintiffs here seek to "effectively eviscerate" FECA's base contribution limits). Section 30125(b) is thus "a closely drawn means of countering both corruption and the appearance of corruption." *McConnell*, 540 U.S. at 167, 173.

In *RNC*, the three-judge district court confirmed that this portion of *McConnell* "was untouched by . . . *Citizens United*." *Rufer v. FEC*, 64 F. Supp. 3d 195, 203 (D.D.C. 2014) (citing *RNC*, 698 F. Supp. 2d at 158-60). *Citizens United* specifically distinguished *McConnell* because that case (like this one) was about "soft money," not independent expenditures. *Citizens United*, 558 U.S. at 361. And in *McCutcheon*, the plurality again confirmed that "[o]ur holding about the constitutionality of the aggregate limits clearly does not overrule *McConnell*'s holding about 'soft money.'" 134 S. Ct. at 1451 n.6. In conformance with *McConnell* and *Citizens United*, the *RNC* court reaffirmed that "'the close relationship between federal officeholders and . . . parties'" means that soft money donations to parties like plaintiffs "have much the same tendency as contributions to federal candidates to result in *quid pro quo* corruption or at least the appearance of *quid pro quo* corruption." 698 F. Supp. 2d at 158-60 (quoting *McConnell*, 540 U.S. at 144). The court thus "reject[ed] plaintiffs' as-applied challenges to § [30125](b) as a matter of law," *id.* at 162, and the Supreme Court affirmed, 561 U.S. 1040 (2010).

Consistent with the principle that lower courts must leave to the Supreme Court "'the prerogative of overruling its own decisions'" when confronted with potentially inconsistent subsequent decisions (Mem. at 27-28 (quoting *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989)), the single-judge Court in this case has already recognized that

"*McConnell* and [*RNC*] appear to control any district court's resolution of this case." Mem. Op. at 15-16; *accord Rufer*, 64 F. Supp. 3d at 206 (rejecting request for preliminary injunction and explaining that the Court "does not 'possess authority to clarify or refine [these cases] in the fashion advocated by the [Plaintiffs], or to otherwise get ahead of the Supreme Court'" (quoting *RNC*, 698 F. Supp. 2d at 160)); *McCutcheon v. FEC*, 893 F. Supp. 2d 133, 138 (D.D.C. 2012) ("[W]e decline Plaintiffs' invitation to anticipate the Supreme Court's agenda." (citing *Rodriguez de Quijas*, 490 U.S. at 484)). Plaintiffs nevertheless request that the Court contravene the bedrock principle that it must apply those precedents having "direct application in a case," *Rodriguez de Quijas*, 490 U.S. at 484, arguing that "[d]eciding which [of three case lines and analyses] control(s) is the real issue" confronting the Court. (Reply at 11.) Plaintiffs are wrong. *McConnell* and *RNC* rejected materially similar challenges to the same provision at issue. (Mem. Op. at 15 (observing that the *RNC* plaintiffs "sought to conduct activity very similar to that . . . here").) Plaintiffs' claim that "*McConnell* and *RNC[]* do not control" here (Reply at 18) is akin to arguing that Earth's orbit is controlled not by our sun but by distant Sirius.

2. Plaintiffs' Arguments About Cognizable Corruption and Independence Are Meritless

Plaintiffs' attempts to situate this case in the wake of "a confluence[]" of other, supposedly more favorable precedential "currents" (Reply at 11-22) remain unsound. They continue to argue that *McConnell*'s holding was undermined by subsequent judicial refinements of the government's anticorruption interest, but, as the Commission has shown, this argument was considered and rejected in an opinion that the Supreme Court affirmed. Mem. at 32-33; *RNC*, 698 F. Supp. 2d at 158-60. It is the "inextricably intertwined" nature of the political parties and their candidates (Mem. at 29 (internal quotation marks omitted)) that makes them

"exploita[ble]," *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 455 (2001) ("*Colorado II*"), by candidates and contributors seeking to engage in corrupt exchanges.

In addition, the plurality in *McCutcheon* expressly distinguished the FECA aggregate limit at issue there from the "base limits" at issue here. 134 S. Ct. at 1451 & n.6. Far from casting doubt on whether the base limits continue to serve the government's concededly important interests, the plurality observed that "[t]hose base limits remain the primary means of regulating campaign contributions." *Id.* at 1451. The answer to how *McCutcheon*'s discussion of corruption "squares with . . . *McConnell*" (Mem. Op. at 17) lies in that critical distinction. FECA's aggregate limit "prevent[ed] evasion of the [base limits] by a person who might otherwise contribute massive amounts of money to a particular candidate through the use of unearmarked contributions to political committees likely to contribute to that candidate." *Buckley*, 424 U.S. at 38. Base limits, by contrast, directly prevent actual and apparent corruption. *Id.* at 26-27 ("To the extent that large contributions are given to secure a political quid pro quo from current and potential office holders, the integrity of our system of representative democracy is undermined."). The *McCutcheon* plurality's holding that the aggregate limit was an unnecessary backstop for the base limits resulted from its determination that the aggregate limit did not serve to prevent circumvention of the base limits "in any meaningful way." 134 S. Ct. at 1452. But that judgment about the *effectiveness* of the aggregate limit expressly had no bearing on whether the base limits continue to limit corruption. They do. That is why, as the plurality noted, its "holding about the constitutionality of the aggregate limits clearly does not overrule *McConnell*'s holding about 'soft money.'" *Id.* at 1451 n.6.

Plaintiffs' other assertions about what qualifies as "'cognizable corruption'" (Reply at 5) reflect a profound misunderstanding of Supreme Court decisions and contribution limits.

Neither *McCutcheon* nor any other case makes "clear" that the government's anticorruption interest requires showing that "contributions actually reach[] a candidate/officeholder" (Reply at 23), or that the interest is restricted to situations "involv[ing] a contribution *to a candidate*" (*id.* at 28), as plaintiffs claim. The Court in *Buckley* recognized the danger that quid pro quos with "current and potential officeholders" could be secured by the "giv[ing]" of "large campaign contributions," as well as the "equal[ly] concern[ing] appearance of corruption stemming from public awareness of the opportunities for abuse inherent" in such a system. 424 U.S. at 26-27. The government's anticorruption interest is not limited to situations where candidates and officeholders are the recipients. 52 U.S.C. § 30116(a)(1)(B)-(D), (2)(B)-(C); Mem. at 39 & n.15.

Plaintiffs' absolutist assertions — for example, that "everyone should know" that this or that activity "poses *no risk* of corruption or its appearance as a matter of law" (Reply at 8 (emphasis added)) — similarly ignore that Congress uses its judgment to establish contribution limits that reduce, but do not necessarily eradicate, actual and apparent corruption. That is why "[e]ven a sub-base-limit contribution could theoretically be given as the result of an illicit quid-pro-quo corruption agreement." (Reply at 27-28.) The FEC has provided just such an example. (SOMF ¶ 133 (discussing apparent quid pro quo involving base-limit-compliant contributions).) The $10,000 limit of 52 U.S.C. § 30116(a)(1)(D) is not a judgment that a $10,000 contribution is necessarily not corrupting, or that a $1 million one necessarily is. It is a constitutional and reasonable judgment that the risk of corruption and its appearance is intolerably higher in the latter situation. (*Contra* Pls.' Statement of Genuine Issues at 49 (Docket No. 58) ("Statement") (contending that no "cognizable" quid pro quo arrangement could have occurred in connection with "contributions . . . at or below the base contribution level").) That is why the Supreme Court has consistently explained that "[t]he primary purpose of FECA [i]s to *limit quid pro quo*

corruption and its appearance." *McCutcheon*, 134 S. Ct. at 1444 (citing *Buckley*, 424 U.S. at 26-27) (emphasis added).

Plaintiffs' mantra that "independence eliminates [the] quid-pro-quo risk" presented by the supposedly anodyne activities they wish to pursue (*e.g.*, Reply at 3) is equally faulty. Initially, this portrayal of plaintiffs' case is misleading because their facial claim against section 30125 (on which they rarely focus) does not rely on any independence rationale. Thus, under that claim, LAGOP's extensive coordination on exempt party activities with federal candidates such as Senator Cassidy (*see* Mem. at 12, 37), permitted by law, could continue. The $10,000 checks that the Cassidy campaign raised for LAGOP without the party's awareness, which were spent on FEA supporting Cassidy at the campaign's direction, could become $100,000 checks. (*Id.*; SOMF ¶¶ 74-78.) For allowing its account to be exploited as a "pass through" in this way, LAGOP could continue to take a 10% "overhead" cut. (Mem. at 37 (internal quotation marks omitted); SOMF ¶ 77.) None of this would have to be "independent" if plaintiffs prevail.

Moreover, plaintiffs' reliance on independence is unavailing even as to their as-applied claims. In arguing in favor of the "[i]ndependent-[c]ommunication [c]ase [l]ine" (Reply at 19-22), plaintiffs' cite the "'[t]he second jurisprudential current'" (*id.* at 20 (quoting Mem. Op. at 9)) the single-judge Court identified in determining that their claim was not so "frivolous" as to preclude jurisdiction in this Court (Mem. Op. at 18-19). But plaintiffs' conclusion that political parties' "independent communications and donations used for them" do not "pose a risk of cognizable corruption . . . as a matter of law" (Reply at 22) elides the key point that, as the single-judge Court put it, this "second jurisprudential current establishes" only "that the risk of corruption arising from contributions to candidates and parties dissipates when the recipient of

the donation is *distinct from a candidate or party*." (Mem. Op. at 9 (emphasis added).) Plaintiffs are not distinct from a party; they are the party.

Indeed, plaintiffs' challenge fails because party committees differ materially from other political committees and super PACs. (Mem. at 28-32.) Congress's FEA restrictions are particularly targeted to parties (*id.* at 28-29), parties have special and distinct roles and regulatory rules (*id.* at 29-32), and parties can already partially fund some "independent" FEA with nonfederal funds under the Levin amendment (*id.* at 32).[1] Most critically, the limits on contributions to nonconnected committees have been found unconstitutional precisely because such groups are *not* candidates or party organizations like plaintiffs. *Id.* at 31-32 & n.10 (collecting cases); *see also RNC*, 698 F. Supp. 2d at 160 (explaining the continuing validity of *McConnell*'s corruption analysis and citing the distinction the D.C. Circuit recognized in *EMILY's List v. FEC*, 581 F.3d 1, 14 (D.C. Cir. 2009), that "'non-profit groups do not have the same inherent relationship with federal candidates and officeholders that political parties do'"). Rather than being the ganders to the super PAC geese (Mem. Op. at 9), parties are entirely different animals.

Plaintiffs' conclusory claim that the differences between parties and nonconnected committees are "superficial" (Reply at 24) fails to rebut this key point. And plaintiffs' attempt to show that having a "*close relation* to candidates" is not troubling (*id.* at 2-3) fails. Plaintiffs rely on examples of purported coordination between super PACs and candidates cited by counsel for

[1] Plaintiffs insist that it is not the political parties themselves that determine who will serve on legislative committees, elect congressional leadership, or organize legislative caucuses, but rather the parties' "*members.*" (Reply at 24.) This proposed distinction is contrary to what the Supreme Court said in *McConnell*. 540 U.S. at 188 (ascribing such responsibilities to "political parties" themselves). Further, that organizations may lack the agency to act without individuals does not advance plaintiffs' arguments because the "members" who are taking such actions here (which nonconnected committees cannot take) are the candidates and officeholders themselves, confirming the unity of interests between candidates and their parties.

amici in a published speech (*id.* at 2 (internal quotation marks omitted)), but that speech took the position that unregulated coordination by super PACs poses a corruption risk when it is not, "in fact, . . . independent" precisely because of that absence of independence. Trevor Potter, *Follow The Money* at 10, http://www.campaignlegalcenter.org/sites/default/files/Trevor%20Potter%20-%20Goldstone%20Forum%20Lecture_0.pdf (Apr. 21, 2016) (last visited June 1, 2016). Plaintiffs' complaints about the state of affairs described in the speech are in support of their contention that the regulation is "underinclusive for not sweeping in single-candidate super-PACS." (Reply at 15-16.) But, critically, plaintiffs have failed to demonstrate that Congress was not "in fact pursuing the interest it invoke[d]" here. *Wagner v. FEC*, 793 F.3d 1, 27 (D.C. Cir. 2015) (en banc), *petition for cert. denied sub nom. Miller v. FEC*, 136 S. Ct. 895 (2016); *id.* at 27-32 (rejecting underinclusiveness-based challenge to FECA provision).

In any event, the soft money contribution limits are indeed premised on the empirically-established tight nexus between political parties and their candidates. (Mem. at 29.) Parties have distinct and unique relationships with candidates that are unlike those of super PACs, which can raise contributions in excess of FECA's base contribution limit only due to the "absence of prearrangement and coordination of . . . [independent] expenditure[s] with the candidate," *SpeechNow.org v. FEC*, 599 F.3d 686, 693 (D.C. Cir. 2010) (en banc) (internal quotation marks omitted). Plaintiffs' claim that "the close-relationship argument has no cognizable weight in constitutional analysis" (Reply at 18) is totally unsupported in the campaign finance context. More to the point, *RNC* expressly relied on that rationale in reaffirming section 30125(b). And contrary to plaintiffs' inapt claim of "speaker-identity discrimination" (Reply at 3, 25), in section 30125(b) Congress closed a loophole that had permitted state parties to serve as "corrupting

forces" when receiving unlimited soft money contributions for FEA that directly affected federal elections, *McConnell*, 540 U.S. at 164.[2]

In sum, plaintiffs' argument that they prevail "as a matter of law" (Reply at 22) fails because the funhouse-mirror version of the law they have presented is distorted and inaccurate. The law established by the "*language*" of controlling decisions (*e.g.*, *id.* at 14) requires the Court to reject their claims.

B. Section 30125(b) Easily Satisfies Closely Drawn Scrutiny

The FEC has also shown that section 30125's soft money restrictions are closely drawn to curb substantial risks of corruption and its appearance. (Mem. at 34-49.) The record overwhelmingly demonstrates that granting plaintiffs' desired relief would increase the incidence and appearance of corruption. Not only are plaintiffs' lengthy objections to the evidence and policy arguments groundless, but their own case shows that section 30125 is very closely drawn.

1. The Record Establishes That the Invalidation of Section 30125(b) Directly Invites the Risk and Appearance of Corruption

The records in *McConnell* and its progeny, and in this case, demonstrate that permitting plaintiffs to eviscerate FECA's base limits in the fashion they propose will again turn them into conduits for apparently and actually corrupt exchanges. (Mem. at 35-39.) Decades of evidence and "hard lesson[s]," *McConnell*, 540 U.S. at 165, place the parties in the midst of corrupt exchanges of official action for financial campaign support, from the Democratic campaign book

[2] Although the Supreme Court has held that parties are capable of making independent expenditures, so such spending should not be presumed to be coordinated, it has also recognized that contributions for such expenditures present a quid-pro-quo corruption risk. *Colo. Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 617 (1996). In light of that risk, the Court has observed that Congress "might decide to change the statute's limitations on contributions to political parties." *Id.* While it has not been possible in decades for political parties to raise unlimited funds for federal independent expenditures, Congress's subsequent confirmation that FECA's base limits apply to soft money contributions is exactly such a "change" with respect to the categories of activity now qualifying as FEA.

scandal to the Watergate era to the explosion of soft money that caused the more recent abuses of the campaign finance system. (Mem. at 2-8, 41-43; SOMF ¶¶ 11, 16-19, 106-07, 109-15, 118-20.) Even with reforms designed to curb such behavior in place, including section 30125(b), and with the difficulty of providing evidence from a counterfactual world in which regulations do not exist (Mem. at 40), the record includes dismaying recent instances of actual or apparent quid-pro-quo corruption resulting from the very type of activity plaintiffs propose (*id.* at 43-45; SOMF ¶¶ 123-28, 130-34). As Congress, the public, and the FEC's expert have all concluded, reopening the soft money loophole will very likely result in additional opportunities for such corruption. (Mem. at 44-45.)

Plaintiffs' principal response is to urge the Court to ignore reality. Their argument appears to be that such well-documented corruption should be waved away because the Supreme Court has supposedly held that it *cannot* exist "as a matter of law." (*E.g.*, Reply at 7 (contending that the "FEC has no evidence of cognizable corruption (including its appearance) . . ."); *id.* at 23 (arguing that the Commission "cannot prove a governmental interest in preventing corruption (including its appearance) because of the fact that independent communications and contributions therefor are involved, and they are non-corrupting"); *id.* ("Just as a billionaire's huge contribution to a single-candidate super-PAC or NCA is non-corrupting, so a much more modest donation to an ICA is noncorrupting — all as a matter of law.").)

Like their distortions of the law, plaintiffs' quarrel with the facts is doomed. As the FEC has shown, plaintiffs' claim that the "*McConnell* record had" no "cognizable corruption" (Reply at 7-8) is incorrect. (Mem. at 40-41.) That record was "to the contrary." *McConnell*, 540 U.S. at 149-50. And the Supreme Court's later observation that the *McConnell* record "does not have any direct examples of votes being exchanged for . . . *expenditures*," *Citizens United*, 558 U.S. at

360 (internal quotation marks omitted) (emphasis added), does not alter the *McConnell* Court's holding that the record thoroughly demonstrated corruption resulting from massive soft money *contributions* to parties. *McConnell*, 540 U.S. at 150 (observing that "'*[d]onations* from the tobacco industry to Republicans scuttled tobacco legislation, just as *contributions* from the trial lawyers to Democrats stopped tort reform'" (emphases added)). These were quid pro quos; the "money affect[ed] outcomes." (SOMF ¶ 111 (internal quotation marks omitted).)

Plaintiffs' myopic focus on the manner in which a $50,000 contribution, say, might be spent attempts to obscure that the principal concern here is the risk or appearance that the $50,000 is the quid in a quid pro quo, regardless of the precise "'voter contact'" or "'get out the vote activities,'" for example, on which it might later be spent. (SOMF ¶ 133 (Senator Robert Menendez's staffer explaining that such state party FEA is "'vital to the Senator's effort'").) Plaintiffs' notion that the Commission is claiming corruption whenever a party expenditure benefits a candidate (Reply at 24 (contending that "'benefit' is not cognizable corruption after *Citizens United* and *McCutcheon*")) is a straw man. Congress identified the categories of state and local party spending "capable of putting a federal candidate in the debt of the contributor," *McConnell*, 540 U.S. at 167, and closely drawn scrutiny does not require a communication-by-communication corruption analysis. What is at issue is the *mutual* benefit inherent in quid pro quo exchanges, and section 30125(b), like other anticorruption laws, encompasses the intuitive reality that contributions to a political party surrogate can be traded for improper quos as easily as a freezer's worth of cash. (Mem. at 36-39.) Plaintiffs do not dispute that a payment to a party committee can be part of a quid pro quo but contend that the combination of "the whole independent-communication case line" and their cramped view of "corruption" means that section 30125 improperly "takes cognizance of something that cannot, as a matter of law,

constitute cognizable corruption." (Reply at 29.) Plaintiffs are wrong. Quid pro quos involving a contribution to a political party are still quid pro quos — both as a matter of fact and law.

2. Plaintiffs' Objections to the Evidence Are Meritless

Plaintiffs use the same approach in responding to the overwhelming record evidence. Their Statement of Genuine Issues improperly takes voluminous additional "[s]pace" (Reply at 29) to present repetitious legal argument. *See* LCvR 7(h)(1) (calling for a "*concise* statement of genuine issues setting forth all material *facts* as to which it is contended there exists a genuine issue necessary to be litigated" (emphases added)). Plaintiffs thus repeat their omnipresent "materiality objection" (Statement at 1 n.1 (defining objection)) in opposition to any evidence they deem inconsistent with the supposed "matter-of-law fact" that their proposed activities "do not give rise to corruption or the appearance of corruption" — which is to say, all of it. (*E.g.*, *id.* at 99.) But plaintiffs' "matter-of-law fact" objection is simply a stand-in for their head-in-the-sand approach to avoiding the inconvenience of the real-world effects of their proposals.[3] The record examples of corruption are plainly relevant and plaintiffs' materiality objections should be rejected. *See Wagner*, 793 F.3d at 10-18 (discussing the history of the challenged contribution limit, including historical and present examples).[4]

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[3] Plaintiffs' extensive reliance in their summary judgment papers on what is supposedly established as a matter of law confirms that the scores of pages of written discovery responses and hundreds of pages of documents they obtained from the FEC were indeed, as plaintiffs had originally suggested, "unnecessary" for their case. (Pls.' Mot. to Expedite at 3 (Docket No. 9); *accord* Opinion and Order at 3 (Docket No. 53) (expressing the Court's "hesitat[ion] to credit Plaintiffs' brand-new representation that a 30(b)(6) deposition is 'pivotally important'").)

[4] Plaintiffs do not object or respond to additional examples in an amicus brief. (*See* Brief of Amicus Curiae The Brennan Center for Justice at N.Y.U. School of Law in Supp. of Def. at 13-20 (Docket No. 50-1) ("Brennan Center Brief").) These examples — the Teapot Dome, the ITT affair, the Keating Five, the Hudson River Casino, Loral Space & Communications, the pardon of Marc Rich, and state level examples — add to the FEC's "illustrative, not exhaustive" presentation. Mem. at 44 & n.16; *accord Wagner*, 793 F.3d at 17 ("We could go on.").

Equally meritless are plaintiffs' repetitious hearsay objections. (Statement at 76-77 n.17 (defining this objection).) To start, their claim that "[b]ooks, periodicals, newspapers, and the like are not within the hearsay exceptions" (*id.*) is incorrect. *Compare, e.g.*, SOMF ¶ 109 (relying on *New York Times* article from 1989), *with* Fed. R. Evid. 803(16) (statements in ancient documents are excepted from the hearsay rule). And their claim that the Court may not rely on statements by "criminals" (including in-court guilty pleas made under oath) admitting to the performance of unlawful acts because such claims are supposedly "highly suspect" (Statement at 76 n.17) is inconsistent with the evidentiary rules' recognition of the general validity of statements against interest made by an unavailable witness. Fed. R. Evid. 804(b)(3). There is nothing suspect about the indictments of or guilty pleas by Herbert Kalmbach, Bob Ney, Jack Abramoff, or Charles Chvala, or any of the other cited examples.

Far more importantly, much of the FEC's evidence of corruption consists of "legislative facts" to which admissibility objections like hearsay do not apply, as courts have repeatedly recognized. *E.g.*, *Rufer*, 64 F. Supp. 3d at 205 (explaining that, in the previous incarnation of this case, the FEC could "cite public documents discussing corruption — *e.g.*, legislative history, legal treatises, or media reports — in its [merits] briefing" (internal quotation marks omitted)); *Libertarian Nat. Comm., Inc. v. FEC*, 930 F. Supp. 2d 154, 157 (D.D.C. 2013) (overruling hearsay objections and finding that legislative facts need not be developed through evidentiary hearings), *aff'd*, No. 13-5094, 2014 WL 590973 (D.C. Cir. Feb. 7, 2014); *Holmes v. FEC*, 99 F. Supp. 3d 123, 126 (D.D.C. 2015) (overruling "most of Plaintiffs' admissibility objections" for the same reason), *rev'd on other grounds*, ___ F.3d. ___, 2016 WL 1639680 (D.C. Cir. Apr. 26, 2016); *Buckley v. Valeo*, 519 F.2d 817, 818 (D.C. Cir. 1975) (en banc) (instructing district court to gather all "necessary" evidence for determination, including "legislative facts"). Indeed, the

Supreme Court frequently relies on such evidence. *E.g.*, *McConnell*, 540 U.S. at 129-32, 145-52 (relying extensively on legislative facts detailing how national party committees solicited soft money donations in evaluating section 30125's constitutionality); *Colorado II*, 533 U.S. at 451-52 & nn.12-13 (2001) (relying upon a political scientist's statement, a former Senator's anecdote, and a political science book); *FEC v. Wisc. Right to Life, Inc.*, 551 U.S. 449, 470 n.6 (2007) ("*WRTL*") (relying on a national survey for the legislative fact that most citizens could not name their congressional candidates); *accord Wagner*, 793 F.3d at 10-18.[5]

In addition, plaintiffs' objections to the FEC's adjudicative facts, including what plaintiffs perceive as the FEC's "implication[s]" from those facts, are insubstantial. (*E.g.*, Statement at 10 (expressing legal theory that there is "nothing wrong" with circumventing an unconstitutional law (internal quotation marks omitted)); *id.* at 46 (objecting to the "physical impossib[ility]" of LAGOP being in "*constant* contact" with federal candidates); *id.* at 49 (clarifying that Senator Cassidy's campaign "received checks made out to LAGOP, which [it then] delivered to LAGOP," not that the campaign itself re-contributed donor contributions to LAGOP); *id.* at 50 (contending that the "mail account" was also known as the "victory account" (*see also* FEC Exh. 7 at 80:5-10 (explaining that the "mail account" was the "victory non-allocable mailing account"))); Statement at 56 (arguing that OPGOP has the "potential at any

[5] Plaintiffs also complain that the FEC did not provide copies of the books it cited in its statement of material facts. (Statement at 76-77 n.17.) These nine books and two congressional reports are recognized works in the fields of government and politics, but for the convenience of the Court and plaintiffs, the FEC attaches the portions of the books and reports cited in its brief, with contextual material. (*See* FEC Exhs. 56-66 (attached hereto); *infra* p. A-1, Supplemental Index of Exhibits (listing exhibits).) These exhibits support the following paragraphs from the FEC's factual submission: SOMF ¶ 5 (Exhs. 56, 57, 58); SOMF ¶¶ 12-13 (Exhs. 59-62); SOMF ¶¶ 17-18 (Exhs. 63-64); SOMF ¶ 19 (Exh. 63); SOMF ¶¶ 117-19, 121-22 (Exh. 65); SOMF ¶¶ 113-14 (Exh. 66). The FEC notes that the books are also readily available from many public sources, including by interlibrary loan at almost any library (such as the Indiana State University Library or Vigo County Public Library, both in Terre Haute, Indiana). FEC Exhibits 1-55 and FEC Sealed Exhibits 1-20 were submitted with the FEC's opening brief.

time to have contributions" even though the record shows that it has raised virtually no contributions for years); *id.* at 57 (relying on testimony elicited by plaintiffs' counsel's leading questions attempting to rehabilitate the OPGOP representative's candid testimony that OPGOP lacks injury (*see* FEC Exh. 12 at 46:19-48:17)[6]).) These quibbles cast no doubt on the evidence showing the close relationship among LAGOP, Republican national committees, and federal candidates and donors, as well as corresponding opportunities for corruption. On the contrary, the evidence shows that when a candidate (*e.g.*, Senator Menendez) is raising five-figure checks from donors with particular needs (*e.g.*, Dr. Melgen) for a state party (*e.g.*, the New Jersey Democratic State Committee) which the candidate knows will go to advance his campaign, even if independently, there is a higher risk of actual or apparent corruption. (SOMF ¶¶ 132-34.)

The FEC's poll showing that the public believes plaintiffs' proposed activities would likely lead to corruption was conducted as expeditiously as possible in light of the compressed schedule for this case, and plaintiffs' many pages of responsive commentary (Statement at 94-103) primarily take issue with the fact that these views contradict plaintiffs' supposed "matter-of-law" facts. (*See id.* at 96-97 (categories "(i)"-"(iii)").) Plaintiffs' objection to the wording of the poll questions does not raise any real methodological concerns but merely argues that, instead of the fair and straightforward questions actually used, the public should have been asked plaintiffs' admittedly "long and convoluted" (and leading) questions. (*Id.* at 99-100.) Plaintiffs offer no reason that the Court should not rely on such polling information, as other courts have

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[6] This testimony, not relied upon until now by plaintiffs, should be stricken. *See* Fed. R. Evid. 611 advisory committee note (c) (1972) (explaining that "[t]he purpose of the qualification 'ordinarily' [in Rule 611(c)] is to furnish a basis for denying the use of leading questions when the cross-examination is cross-examination in form only and not in fact, as for example the 'cross-examination' of a party by his own counsel after being called by the opponent"); *Westfall v. Norfolk S. Ry. Co.*, No. 3:13-926, 2014 WL 4979273, at *2-3 (N.D. Ind. Oct. 6, 2014) (striking deposition testimony that "was the result of improper leading questions" by party's counsel that "contradict[ed]" the "direct testimony").

done. *See, e.g.*, *Atkins v. Virginia*, 536 U.S. 304, 316 n.21 (2002) (using polling data to show Americans' "widespread consensus" that executing the "mentally retarded is wrong").

Lastly, plaintiffs' discussions of Professor Jonathan Krasno's expert testimony (*see* Statement at 37-42, 103-110) fail to rebut his conclusion that "[s]hould the plaintiffs prevail here, their victory will bring the national party organizations back into the business of raising soft money by acting through compliant state and local party organizations. This is exactly what happened before and exactly what will happen again, except on a much larger scale." (SOMF ¶¶ 55, 136.) That conclusion is amply supported by Professor Krasno's report and testimony, as well as the extensive evidence demonstrating the close relationship between the national parties and their state and local affiliates (SOMF ¶¶ 45-86); the undisputed financial interrelation and overlap in personnel among plaintiffs and the Republican national committees (*id.* ¶¶ 58-60, 64-68, 74-75, 81, 84, 92); the parties' undisputed use of state and local entities during the soft money era (*id.* ¶¶ 103, 105); and the examples of corrupt or apparently corrupt exchanges the FEC and amici have cited, *id.* ¶¶ 11, 16-19, 106-07, 109-15, 118-20, 123-34; *supra* p. 15 n.4.

Contrary to plaintiffs' objection that Professor Krasno's report relies on a "constitutionally flawed" definition of corruption, the report makes clear that his conclusion takes into account what the Supreme Court has recently said about corruption. (FEC Exh. 6 at 2-9, 12-13 (his conclusion that "overturning the ban on state and local parties' use of nonfederal funds" intolerably risks corruption "still hold[s]" more than a decade after *McConnell* and in light of the Supreme Court's subsequent rulings in *WRTL*, *Citizens United*, and *McCutcheon*).) While quid pro quo corruption may indeed be epitomized by the "explicit exchange[s]" engaged in by former Representative Duke Cunningham (*see* Pls.' Exh. 1 at 16:3-13 (Docket No. 58-1)), plaintiffs' claim that such explicitness is required is wrong. The government is not required to

produce a firsthand witness or document memorializing an explicit exchange (*e.g.*, Statement at 41), though there is an ample amount of such evidence in the record. (*E.g.*, SOMF ¶¶ 119-20, 123-24, 129; *contra* Reply at 11 (baselessly contending that the FEC "frequently slips back into *McConnell*'s now-rejected broad 'corruption'").) Such a standard would be inconsistent with the distinct appearance of corruption concern, in any event. Plaintiffs fault Professor Krasno for not relying on recent polling to show the appearance of corruption. (Reply at 39-40.) However, recent survey evidence only further confirms that an appearance of corruption is perceived by the public when plaintiffs' proposed activity is described. (SOMF ¶ 135.) This lends further support to Professor Krasno's position, which relied in part upon an older survey for the conclusion that the legal landscape regarding campaign finance "contribute[s] to Americans' level of faith in the political system." (FEC Exh. 6 at 9.)

3. Plaintiffs' Policy-Based Arguments Are Irrelevant and Unfounded

In arguing in favor of the "repeal or change of many FEA laws and regulations" (Reply at 5), plaintiffs improperly ask the Court to "'question Congress's policy choice to limit contributions to political parties'" (Mem. at 49 n.18 (quoting *RNC*, 698 F. Supp. 2d at 160 n.5)). Plaintiffs' policy-based arguments relying on the FEC's forum and other observer commentary have no bearing in this case. As amicus curiae The Brennan Center aptly points out in response to plaintiffs' citation of its research, the "rich debate" about legislative reform should be left to Congress and not "short-circuit[ed]" by the Court's substitution of "its own judgment for that of the country's elected representatives." (Brennan Center Brief at 9.)[7] In any event, plaintiffs do

[7] In the same vein, plaintiffs' reliance on the comments by a party official at the FEC's forum (Statement at 21) is undermined by that official's express caveat that "the recent lawsuit by Jim Bopp to strike down individual limits to parties [referring to the 2014 iteration of the soft money challenge in *RNC v. FEC* that was dismissed] is not the direction our party would advocate." (Answer ¶ 71 (Docket No. 19) (internal quotation marks omitted).)

not dispute that the national, state, and local parties have raised and spent hundreds of millions of dollars in the election cycles since BCRA was enacted. (SOMF ¶¶ 87-97.) Nor do they dispute that many state and local committees have availed themselves of the provisions of the Levin amendment. (SOMF ¶ 33.) And they do not even dispute that parties can amass the resources needed for effective advocacy. (Mem. at 48-49.) Accordingly, even if the Court's role here were legislative and not judicial, plaintiffs' policy claims are flawed.

4. Plaintiffs' Challenge Itself Demonstrates That Section 30125(b) Is Very Closely Drawn

From the foregoing, it is clear that the evidence conclusively establishes that section 30125(b) closely fits the important interest in combating actual and apparent quid pro quo corruption, and there is no "substantial mismatch between the Government's stated objective and the means selected to achieve it." *McCutcheon*, 134 S. Ct. at 1446, 1456-57; Mem. at 45-49.

Additionally, plaintiffs' hollow claims of burden establish that section 30125(b) is so closely drawn that the limit imposes nothing more than hypothetical restrictions on plaintiffs' desired behavior. (Mem. at 46.) The evidence also shows that Congress's tailoring was so fine that, as the FEC has argued elsewhere, plaintiffs have been unable to establish an actual injury sufficient to present any bona fide controversy in this Court. (*See generally* FEC's Mem. in Supp. of Mot. to Dissolve Three-Judge Ct. With Instrs. to Dismiss Or, Alternatively, to Dismiss Action (Docket No. 40); FEC's Reply in Supp. of Its Mot. to Dissolve Three-Judge Ct. With Instrs. to Dismiss Or, Alternatively, to Dismiss Action (Docket No. 56) ("Dismissal Reply").) No plaintiff has any individual contribution it cannot use on any FEA it wishes. For that reason, LAGOP's alternative request to set up an "independent-communications-only account" that is

featured so prominently in its last brief does not present an injury for the Court to remedy because that "ICA" would not be materially different from LAGOP's federal account.[8]

Further, the local committees that have been enlisted for this iteration of the soft money challenge do not even wish to spend any money on FEA. The "paean" emails JPGOP and OPGOP say their volunteers wish to send (Statement at 55), like the inadvertent FEA JPGOP has removed from its website on the advice of counsel in an apparent attempt to establish injury, are neither contributions nor expenditures. *See* 11 C.F.R. § 100.94(a)-(c), 100.155(a)-(c); *compare* Reply at 4 n.8 (urging the Court not to dismiss the local plaintiffs on the flimsy basis that "one plaintiff [*i.e.*, LAGOP] has standing"). For that reason, this attempt to make out a federal case — despite the local plaintiffs' conduct being unhindered — does not present the Court with the "FEC's most difficult as-applied challenge to defend in this case." (Pls.' Mem. Opposing FEC's Mot. to Dissolve Three-Judge Ct. or Dismiss at 29-30 (Docket No. 54).) Nor does any of this, including the potential for LAGOP's "ICA" to be filled with FECA-compliant contributions or the proposed FEA that it has *chosen* not to use its federal funds on, constitute a "just-do-something-else argument." (Reply at 5.) Spending funds raised within federal limits labeled as federal funds is the same thing as spending such funds when they are labeled as nonfederal.

Separately, plaintiffs' repeated concessions that their proposed FEA "are . . . 'federal' enough for federal regulation" confirm that the FEA they wish to do will affect *federal* elections. (Reply at 13; *id.* at 17 (distinguishing *RNC* on the basis that "this case" does not argue that "the

[8] Tellingly, LAGOP's representative revealed that whether a contribution is made in an individual or corporate capacity does not necessarily reflect a difference in who is ultimately exercising First Amendment rights. (FEC Exh. 7 at 124:13-24 (distinguishing between the contributions of "*individuals* or *people* that give through their LLC" (emphases added)); *id.* at 128:21-129:8 (discussing "*individuals* that would give corporate money" (emphasis added)). To the extent this testimony indicates that certain corporate donations could be given just as easily as hard money individual contributions, it underscores LAGOP's absence of injury.

as-applied activity [i]s 'insufficiently federal'").) This acknowledgement, in combination with plaintiffs' belated clarification that LAGOP would like to use corporate funds, establishes that plaintiffs are seeking to have the Court invalidate or at least interpret 52 U.S.C. § 30118(a). (Dismissal Reply at 19-23.) But because section 30118(a) is a FECA provision that predates BCRA, that key element of plaintiffs' desired relief exceeds the jurisdiction of this BCRA Court.

Finally, plaintiffs fail to refute the FEC's showing that the Levin provision makes section 30125(b) even more closely drawn. The nonfederal funds "[b]an" plaintiffs' claim exists in section 30125(b) (*e.g.*, Reply at 8) is actually not a ban but plaintiffs' own choice not to use the Levin amendment's exception permitting use of some nonfederal funds. *See* 52 U.S.C. § 30125(b)(2). The Court does not need to evaluate section 30125 based on plaintiffs' choice to treat the law as more restrictive than it is; the Court should evaluate the law as it is. Thus, while using nonfederal funds through the Levin provision may not allow plaintiffs to do everything they want, it would permit them to do some of it using an allocated portion of nonfederal funds (Mem. Op. at 12-13), including all the activity described in Count I and much of that described in Count II. Indeed, BCRA's fine-tuning of how nonfederal funds may be used on FEA was "[a] refinement on the pre-BCRA regime that permitted parties to pay for certain activities with a mix of federal and nonfederal funds." *McConnell*, 540 U.S. at 162. Given Louisiana state law and plaintiffs' limited fundraising prospects, the Levin provision would allow plaintiffs to raise and spend nearly the same amount of nonfederal funds over the course of a four-year period as they would under their own proposal. (Mem. at 47-48.) Accordingly, Congress's calibration of how nonfederal funds may be used on FEA in section 30125(b) is closely drawn.[9]

[9] Although this is the final merits brief to be submitted in this case, plaintiffs have never articulated their challenge to 52 U.S.C. § 30125(c). (Mem. at 34 n.11 (noting that "plaintiffs . . . have failed to identify anything they wish to do that section 30125(c) restricts").) Plaintiffs now

III. SECTION 30104(e)(2) IS ALSO CONSTITUTIONAL

Plaintiffs do not dispute that 52 U.S.C. § 30104(e)(2) — requiring state and local committees to report their FEA above a $5,000 annual threshold — is a disclosure requirement that is reviewed under "'exacting scrutiny,'" which "requires a 'substantial relation'" between the disclosure requirement and a "'sufficiently important' governmental interest." *Citizens United*, 558 U.S. at 366-67 (quoting *Buckley*, 424 U.S. at 64, 66)); Mem. at 24-25. Instead, plaintiffs appear to question whether the government actually has a "disclosure interest" that can "support" section 30104(e)(2). (Reply at 10 n.14.)

This argument is meritless. Section 30104(e)(2), which plaintiffs *themselves* call "the Reporting Requirement" (Reply at 10 n.14), plainly serves to provide disclosure of state and local parties' non-de-minimis FEA. The Supreme Court has repeatedly confirmed that such information is "constitutionally regulable" (*id.*) by upholding the Act's reporting requirements as "directly serv[ing] substantial governmental interests." *Buckley*, 424 U.S. at 68. In *McConnell*, the Court dispositively concluded that such interests — "providing the electorate with information, deterring actual corruption and avoiding any appearance thereof, and gathering the data necessary to enforce more substantive electioneering restrictions — apply in full to BCRA." 540 U.S. at 196; *see also McCutcheon*, 134 S. Ct. at 1460 (lauding the "effective[ness]" of the "[r]eports and databases . . . available on the FEC's Web site"); *Citizens United*, 558 U.S. at 367.

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assert that they have funds that were not "raised consistent" with section 30125(c). (Reply at 4 n.8.) The Court should not credit this claim. As to the local parties, it is demonstrably false because those committees' funds come not from any of their (failed) fundraising efforts but from a sole source that is unrelated to fundraising: qualifying fees. (SOMF ¶¶ 82, 85.) And even assuming LAGOP did fundraise in a manner inconsistent with section 30125(c), plaintiffs have not made any argument about why the provision is unconstitutional. Without any reason presented for invalidating the provision, the Court should reject the challenge.

Plaintiffs' attempt to merge their challenge to section 30104(e)(2) with their arguments against section 30125 (Reply at 10 n.14) is equally baseless. They claim that the "FEC has already acknowledged that the challenged provisions rise or fall together" (*id.*), but that is not so. (Def. FEC's Opp'n to Pls.' Appl. for a Three-Judge Ct. at 41 n.12 (Docket No. 15) (discussing the relationship between plaintiffs' challenges to subsections 30125(b) and (c), but not mentioning section 30104(e)(2)); *compare id.* at 44-45 (separately discussing section 30104(e)(2)); *accord* Mem. at 34 n.11 (discussing subsections 30125(b) and (c) only)).) In any event, plaintiffs' notion that the constitutionality of section 30104(e)(4) is derivative of section 30125's constitutionality is patently incorrect. Even if one were to accept plaintiffs' baseless claim that section 30125 "*suppress[es]*" speech (Reply at 1), the disclosure provision in section 30104(e)(2), like other such requirements, "impose[s] no ceiling on campaign-related activities, and *do[es] not prevent anyone from speaking*." *Citizens United*, 558 U.S. at 366 (internal quotation marks omitted) (emphasis added). Plaintiffs rail against "[d]isclosure for its own sake" (Reply at 10 n.14) and the supposed demerits of section 30125(b) as a matter of policy, *see supra* pp. 20-21, but they utterly fail to explain why section 30104(e)(2) lacks a substantial relation to the government's undisputed and important interests.[10] The Court must reject their challenges.

CONCLUSION

For the foregoing reasons and those in the Commission's opening memorandum, if the Court reaches the merits it should grant summary judgment to the FEC.

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[10] Plaintiffs' citations of *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995) and *Van Hollen v. FEC*, 811 F.3d 486 (D.C. Cir. 2016), *pet. for reh'g en banc filed*, No. 15-5016 (D.C. Cir.) are unavailing. The Court in *McIntyre* specifically distinguished Ohio's improper requirement of "compelled self-identification on all election-related writings" as "a far cry" from the Court's decision in *Buckley* to uphold FECA's requirement that independent expenditures (express advocacy) be disclosed. 514 U.S. at 355. *Van Hollen* does not concern the constitutionality of a FECA disclosure provision but the FEC's regulatory implementation of a provision, 52 U.S.C. § 30104(f), whose constitutionality is not at issue. 811 F.3d at 488-89, 492.

Respectfully submitted,

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SUPPLEMENTAL INDEX OF EXHIBITS

FEC Exhibit No.	Exhibit Description
56.	Richard Hofstadter, *The Idea of a Party System* (1970) (excerpt)
57.	E.E. Schattschneider, *Party Government* (1942) (excerpt)
58.	G. Washington, *Farewell Address*, reprinted in S. Doc. No. 106-21, 106th Cong., 2d Sess. (2000) (excerpt) (provided in lieu of the reprinting of the address in *Documents of American History* (H. Commager ed. 1946))
59.	Robert E. Mutch, *Campaigns, Congress, and Courts: The Making of Federal Campaign Finance Law* (Praeger 1988) (excerpt)
60.	Louise Overacker, *Presidential Campaign Funds* (Boston University Press 1946) (excerpts)
61.	Herbert E. Alexander, *Financing Politics: Money, Elections and Political Reform* (Congressional Quarterly Press 1976) (excerpt)
62.	David W. Adamany & George E. Agree, *Political Money: A Strategy for Campaign Financing in America* (Johns Hopkins University Press 1975) (excerpt)
63.	Final Report of the Select Committee on Presidential Campaign Activities, S. Rep. No. 93-981, 93d Cong., 2d Sess. (1974) ("Final Report") (excerpts)
64.	Richard Reeves, *President Nixon: Alone in the White House* (Simon & Schuster 2001) (excerpts)
65.	Jack Abramoff, *Capitol Punishment: The Hard Truth About Washington Corruption From America's Most Notorious Lobbyist* (WND Books 2011) (excerpts)
66.	Thompson Comm. Rep., S. Rep. No. 105-167 (1998) ("Thompson Comm. Rep.") (excerpts)