Nos. 02-1674 et al.

IN THE

Supreme Court of the United States

MITCH MCCONNELL, UNITED STATES SENATOR, ET AL.,
Appellants/Cross-Appellees,

v.

FEDERAL ELECTION COMMISSION, ET AL.,
Appellees/Cross-Appellants.

On Appeals and Cross-Appeals from the United States District Court for the District of Columbia

BRIEF OF THE HONORABLE FRED THOMPSON AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANTS-APPELLEES

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August 5, 2003

QUESTION PRESENTED

Amicus will address the following question:

Whether the evidence of overwhelming abuses in the raising and spending of soft money in the 1996 presidential election, which were uncovered by a Senate Governmental Affairs investigation in 1997 and 1998 and debated in the context of passage of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. No. 107-155, 116 Stat. 81, shows that Congress had ample justification to enact BCRA Titles I and II to prevent corruption, the appearance of corruption, and widespread circumvention of the existing federal campaign finance laws.

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INTEREST OF *AMICUS CURIAE*[1]

Senator Fred Thompson, a Republican from Tennessee, served in the United States Senate from 1994 to 2003. From 1997 to 2001, he chaired the Senate Governmental Affairs Committee, which investigated numerous abuses of the campaign finance laws during the 1996 presidential campaign. That special investigation culminated in a six-volume report spanning nearly 10,000 pages (including numerous exhibits) that became a substantial basis for Congress's enactment of the campaign finance reforms now before this Court. *See Investigation of Illegal or Improper Activities in Connection with 1996 Federal Election Campaigns*, S. Rep. No. 105-167 (1998) ("Report").

Senator Thompson also co-sponsored the Senate bill Congress enacted as the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. No. 107-155, 116 Stat. 81, just as he had co-sponsored the original campaign finance reform legislation introduced by Senators John McCain and Russell Feingold in 1995. Accordingly, Senator Thompson has a strong interest in the BCRA reforms being upheld as constitutional. This *amicus* brief seeks to show that the Report's findings on campaign finance abuses in the 1996 election provided Congress with an overwhelming factual basis for concluding that the BCRA reforms are necessary to plug the "[u]nanticipated loopholes discovered in the federal campaign finance laws since they were developed in the 1970s." Report at 4499. Those loopholes allowed for "campaign finance law manipulation and corruption" that needed to be redressed to restore confidence and integrity in our electoral system. *Id.*[2]

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amicus* represents that it authored this brief and that no entity other than *amicus* made a monetary contribution to its preparation or submission. All parties have consented to the filing of this *amicus* brief.

[2] Rather than advance constitutional and other legal arguments similar to those that the government and others will make, which *amicus* adopts, this brief seeks to show that Congress had more than

STATEMENT

1. The Federal Election Campaign Act of 1971 ("FECA"), 2 U.S.C. § 431 *et seq.*, was enacted to reduce the "actuality and appearance of corruption" created by the "opportunities for abuse inherent in a regime of large individual financial contributions." *Buckley v. Valeo*, 424 U.S. 1, 26-27 (1976) (per curiam). FECA set limits on how much an individual may contribute to a candidate's campaign or a national political party committee for the purpose of influencing a federal election.[3] It also continued longstanding prohibitions on the use of a corporation's or labor union's treasury funds to influence federal elections. *See* 2 U.S.C. § 441b (2000). The purpose behind those restrictions was to ensure that contributors could not exercise or be perceived as exercising undue sway over a candidate by making massive contributions.

As contrasted with that "hard money," as funds subject to those limits came to be called, political parties also raised "soft money," supposedly for general party-building purposes or state elections (but, as explained below, in actuality to influence federal elections). Soft money was not subject to the same regulatory limits and prohibitions as hard money, and consequently was limited in its use to influence a federal election. *See* JSSA 30sa-32sa (per curiam) (discussing FEC allocations permitting party activities that influence federal elections to be funded with a mix of hard and soft money) (citing, *inter alia*, FEC Adv. Op. 1978-10). Over time, however, clever politicians and their tacticians devised ways to use unlimited soft money in the party's coffers to influence federal campaigns.

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ample factual support for enacting the BCRA, as evidence gleaned in the Report demonstrates.

[3] Prior to enactment of the BCRA, those limits were: $20,000 per calendar year for an individual contribution to a national political party committee; $5,000 per calendar year to any other political committee; and $1,000 per election for a candidate seeking federal office. *See* 2 U.S.C. § 441a(a)(1) (2000).

2. The 1996 presidential election campaign brought into stark relief the breakdown of the system established under FECA and upheld as constitutional by this Court in *Buckley*. The soft-money fundraising and spending in that election rendered all but meaningless the source and contribution limits that Congress had established in the 1970s in FECA. In 1996, the national parties' total soft-money spending reached $272 million, or 30% of total spending, up from $80 million, or 16% of total spending, in 1992. *See* JSSA 34sa-35sa (per curiam).[4]

Once soft money was placed in party coffers, the parties then used it for purposes that exploited loopholes in how such funds could be spent. In 1996, the parties aired thousands of thinly disguised "issue advertisements" on television and radio that in reality were intended to, and did, influence federal elections. The theory of the legality of this practice was that the ads stopped just shy of using so-called "magic words" of express advocacy, such as "Vote for Clinton" or "Reject Dole," which would have required the ads to be funded with regulated hard money. *See* JSSA 778sa (Kollar-Kotelly). Non-party interest groups such as unions and nonprofits also got into the act by running similar sham issue ads, which often were orchestrated by or coordinated with a political party.

As the 1996 campaign proceeded, public attention focused on White House coffees and overnights, large contributions to parties by persons interested in affecting national policy, and an unprecedented television blitz of advertisements that touted the leading candidates for president.[5] In early 1997, in response to this rapid increase in

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[4] These staggering figures have only gotten larger with time. JSSA 38sa (per curiam) (noting that national party soft-money spending rose to $498 million, or 42% of total spending in the 2000 elections).

[5] *See, e.g.*, Alison Mitchell, *Building a Bulging War Chest: How Clinton Financed His Run*, N.Y. Times, Dec. 27, 1996; Michael Weisskopf & Charles R. Babcock, *Donors Pay and Stay at White House; Lincoln Bedroom a Special Treat*, Wash. Post, Dec. 15, 1996; Michael

soft-money fundraising and spending, the Senate Committee on Governmental Affairs commenced a special investigation to determine whether those activities were legal under FECA or, if technically legal, were abusive evasions of the campaign finance laws. Relevant here, the investigation focused on:

> The independence of the presidential campaigns from the political activities pursued for their benefit by outside individuals or groups;
>
> Unregulated ("soft") money and its effect on the American political system;
>
> Promises and/or the granting of special access in return for political contributions or favors;
>
> The effect of independent expenditures (whether by corporations, labor unions, or otherwise) upon our current campaign finance system, and the question as to whether such expenditures are truly independent; [and]
>
> Contributions to and expenditures by entities for the benefit or in the interest of public officials.

Report at 11-12.[6] The committee issued 427 subpoenas, reviewed more than 1.5 million responsive documents, took 200 depositions, conducted more than 200 witness interviews, and held 32 days of hearings where it took testimony from 72 witnesses. *Id.* at 15.

The committee's Report, released in March 1998, was approved by a vote of eight to seven, split along party lines. *See id.* at 23; *id* at 1-4555. The minority committee members published their own findings and recommenda-

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Isikoff & Mark Hosenball, *Soft Money, Easy Access*, Newsweek, Oct. 21, 1996.

[6] The committee also investigated other issues such as illegal foreign contributions and conflicts of interest of federal officials. Report at 11. Although those issues are not directly relevant to the matters before this Court, they do illustrate the carelessness of the political parties in their relentless pursuit of soft money.

tions, which will be cited herein as the "Minority Report." *See* Minority Report at 4557-9575. Due to a politically charged atmosphere, the majority Republican committee members focused more on abuses by Democrats, while the minority focused more on abuses by Republicans.[7] Both majority and minority fully agreed, however, that "[t]he Committee investigation has built an undeniable case for campaign finance reform" by showing that "[t]he soft money loophole . . . led to a meltdown of the campaign finance system that was designed to keep corporate, union and large individual contributions from influencing the electoral process." *Id.* at 4562, 7515; *see also* Report at 4459 ("[T]he federal campaign finance system virtually collapsed."); Additional Views of Senator Collins at 4535 ("[T]he hearings provided overwhelming evidence that the twin loopholes of soft money and bogus issue advertising have virtually destroyed our campaign finance laws, leaving us with little more than a pile of legal rubble.").[8]

SUMMARY OF ARGUMENT

Congress had a compelling interest in enacting the BCRA reforms. The rapidly increasing practices of raising and spending soft money (with a significant focus on sham "issue ads" that unquestionably influence federal elections) fully justify the BCRA reforms. "[S]oft money spending by political party committees eviscerates the ability of the FECA to limit the funds contributed by individuals, corporations, or unions for the defeat or benefit of specific candidates." Report at 4468. The evisceration of the original limits set by FECA through soft-money contributions has "caused a loss of public confidence in the integrity of our campaign finance system. By inviting

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[7] The majority and minority members also differed at times on whether certain of the abuses were actual violations of pre-BCRA law.

[8] Although as Chair *amicus* did not vote in favor of the Minority Report, the combined findings of both reports provide a devastating look at the fundraising practices of both parties. For that reason, this brief cites and discusses the findings of both the majority and the minority.

corruption of the electoral process," the raising of such massive sums of soft money from large donors "threaten[s] our democracy." Minority Report at 4565.

Many of the proponents of the BCRA cited the findings of the Report and advanced its legislative proposals. Understanding the basis for the committee's Report, therefore, serves as a critical factual predicate to Congress's enactment of the BCRA.

ARGUMENT

I. PERVASIVE SOFT-MONEY FUNDRAISING LED TO A WIDESPREAD PUBLIC PERCEPTION THAT THE CAMPAIGN FINANCE SYSTEM WAS CORRUPT

After Republicans won control of both houses of Congress in the 1994 mid-term elections, President Clinton's 1996 re-election campaign developed a virtually unslakable "thirst for money" in the drive to keep the White House. Report at 23. Unable to raise sufficient amounts of hard money under FECA's contribution limits, the Democrats turned to soft-money contributions given, not to the Clinton/Gore campaign, but rather to the Democratic National Committee ("DNC") and state Democratic parties. As the Report details, the Republicans naturally followed suit. Those soft-money contributions, in turn, funded issue ads and other activities designed by both parties to influence the 1996 presidential election.

A. Both Parties Traded Access To Candidates And Senior Government Officials For Large Soft-Money Contributions

The pursuit of large contributions of soft money led to a "willingness to sell access to senior government officials." Report at 65. Candidates urged potential donors to contribute soft money to federal and state party committees (or to interest groups working to elect the candidate). In exchange, donors expected and often received unprecedented access to federal officeholders. Soft-money contri-

butions – unlimited in amount – were thus far more successful at gaining access for contributors to politicians than hard-money contributions, which FECA limited to $1,000 per person. *See* 2 U.S.C. § 441a(a)(1), (6) (2000).

As the following examples gleaned from the Report establish, public officials used their offices to raise massive contributions from donors, who in turn sought and received access to those officials to advance their own interests. Such a process gave rise, at a minimum, to a powerful perception of corruption.

1. *White House Coffees, Overnights, and Other Fundraising Events by Democrats.* The Report concluded that President Clinton used the White House on hundreds of occasions to reward contributors and to provide access for donors who gave massive amounts of money to the DNC. *See* Report at 41 ("Perhaps nothing illustrates this merchandising of the Presidency better than the DNC's White House 'coffees' – fundraising events at which major donors were provided access to the President in exchange for their campaign contributions."). In January 1995, Terrance McAuliffe, then-DNC Finance Chairman and soon-to-become National Finance Chairman for Clinton/Gore '96, drafted a memorandum suggesting White House coffees, overnights, golf games, and morning jogs as ways to give major donors "'quality time'" "'to discuss issues and exchange ideas with the President.'" *Id.* at 194. The President responded, "'yes, pursue [these events] and promptly – and get other names at 100,000 [dollars] or more; 50,000 [dollars] or more.'" *Id.* at 195.

> Between January 11, 1995 and August 23, 1996, the White House hosted 103 coffees. Most lasted at least an hour, and the President attended the vast majority of them. Approximately 60 of these were DNC-sponsored coffees, 92 percent of the guests at which were major Democratic Party contributors. These guests made contributions during the 1996 election cycle of $26.4 million, an average contribu-

> tion of over $54,000 per person, with one-third of their total donations, some $7.7 million, given within a month of the donor's attendance at a White House coffee.

Id. at 41; *see also id.* at 196 ("in keeping with the DNC's plan to cultivate 'top top' contributors, at least 12 individuals contributed at least $100,000 on or around the dates of the coffees they attended") (footnote omitted).[9]

Many donors also stayed overnight at the White House, "often in the historic Lincoln Bedroom." Minority Report at 7956. These overnight guests, "178 individuals – from 114 different families – contributed a total of more than $5 million to the DNC . . . during the 1996 election cycle[,] . . . an average contribution per family of over $44,000." Report at 199 (footnote omitted). As the evidence discussed further below demonstrates, many donors hoped to get the administration's assistance to further their private business interests, and some apparently succeeded.

The President and Vice President also placed many phone calls soliciting soft-money donations for the DNC. *See id.* at 501-12. Such telemarketing by our highest elected officials at best "amounted to unsavory and unseemly activity that lessens the dignity of these offices." *Id.* at 521. It also "would defy reality not to recognize that the recipients of such calls, many of whom had business interests, would find it difficult to turn down requests for funds from persons who exercise such vast power." *Id.*

2. *Republican Soft-Money Fundraising Efforts.* The Minority Report catalogued Republican use of access to the White House and senior government officials for fundraising for the Republican National Committee ("RNC"). "Tablebuyers" purchasing 10 seats at the 1992 President's Dinner were "entitled to attend a 'Private Reception

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[9] Coffees were a highly efficient way to raise money. The DNC's overhead costs were "negligible," while direct mail overhead ran at 42%. Report at 196 & n.29.

hosted by President and Mrs. Bush at The White House' or a 'Reception hosted by The President's Cabinet.'" *Id.* at 5418 (noting that tablebuyers could also attend a "'Luncheon hosted by Vice President and Mrs. Quayle'" and a "'Senate-House Leadership Breakfast hosted by Senator Bob Dole and Congressman Bob Michel'"). Tablebuyers could also "'request a Member of the House of Representatives to complete the table of ten,'" and the purchase of a second table gained the "'option to request one Senator or one Senior Administration Official.'" *Id.* at 5418-19; *see also id.* at 5419 (explaining that fundraisers would receive similar benefits, and warning: "'Note: Attendance at all events is limited. Benefits based on receipts.'").

Promotional materials for the RNC's two principal donor programs, Team 100 and the Republican Eagles, promised that members "would receive special access to high-ranking Republican elected officials, including governors, senators, and representatives." *Id.* at 7968. Team 100 membership requires an initial contribution of $100,000, and $25,000 for each of the next three years; Republican Eagle membership requires contributions of $15,000 annually. *Id.* One fundraising letter to a prospective Team 100 member represented that, after Ed Lupberger, CEO of Entergy, joined Team 100, Haley Barbour, then-Chairman of the RNC, "'escort[ed] him on four appointments that turned out to be very significant in the legislation affecting public utility holding companies. In fact, it made Ed a hero in his industry.'" *Id.* at 7971. And a memorandum from an RNC aide to the Team 100 chairman reported that the RNC sought to get a "'hot'" prospect "'an appointment with [Representative] Dick Armey, so we can get his other $50,000.'" *Id.* at 8036.[10]

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[10] "[A] 1995 Eagles brochure contains photographs of Eagles members meeting with former President George Bush, former Vice President Dan Quayle, Governor Pete Wilson, Senators Connie Mack and Kay Bailey Hutchison, and Mayor Rudolph Giuliani." Minority Report at 7969. The brochure states: "'Each Year Eagles receive invitations

From May to August 1996, presidential candidate Robert Dole attended "at least 25 RNC soft-money fundraisers." *Id.* at 8301. A 1997 fundraising letter by then-Senate Majority Leader Trent Lott, sent on behalf of the National Republican Senatorial Committee, promised contributors "'plenty of opportunities to share [their] personal ideas and vision with some of our top Republican leaders, senators, and panel members.' Failure to contribute meant that 'you could lose a unique chance to be included in current legislative policy debates – debates that will affect your family and your business for many years to come.'" *Id.* at 7974 (alteration in original); *see also id.* at 7968-78 (more examples of special access for large RNC donors).[11]

3. *The Roger Tamraz Contributions.* "One of the most egregious examples of access being provided in exchange for political contributions concerns businessman Roger Tamraz," *id.* at 4574, one of "a number of alarmingly unsavory characters" who gained access to President Clinton, Report at 41. Tamraz, an international businessman, was wanted by French police and faced an Interpol arrest warrant for embezzlement in Lebanon. *Id.* at 43.

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to four national meetings. At least two of these meetings take place in Washington, D.C., and feature strategy and issue committee sessions with prominent elected Party leaders from the U.S. Senate and House on such topics as the budget and tax reform, international trade and regulatory reform, health care and foreign policy. Other participants have included Republican Presidents (*at the White House*), Governors and former Administration officials.'" *Id.*

[11] A 1993 letter urging contributors to join the Republican Senate Council stated that a "'standard'" membership ($5,000 yearly) "'entitles you to monthly meetings while the Senate is in session[,] . . . generally consist[ing] of discussion on current pending legislation with the ranking Republican on the pertinent committee addressing the membership. The Policy Board level [$15,000 yearly] is entitled to all the standard membership benefits in addition to quarterly dining with this smaller group and the Republican Senators. The meetings serve as a virtual one-on-one as the Senators may outnumber the Policy Board members.'" Minority Report at 8033.

Tamraz sought U.S. government backing for an oil pipeline project in the Caucasus and was willing to invest significant sums of money to get it. When officials at the National Security Council ("NSC") determined that his schemes were untenable and harmful to U.S. foreign policy interests, Tamraz began making huge contributions, donating a total of $300,000 to the DNC and several state democratic parties, and promising more. *See id.* at 2910-14. The allocation of those donations came at then-DNC National Chairman Don "Fowler's direction." *Id.* at 2913; *see also id.* at 2914 ("Buoyed by their success in winning such large sums from Tamraz, DNC Finance Director Richard Sullivan recounted, 'all of us were continually asking him for money through the course of the year' – perhaps 'every six weeks' during 1996."). When asked at the committee hearings whether access to the President for promotion of his pipeline was a reason for the donations, Tamraz candidly replied: "'Senator, I'm going even further. It's the only reason – to get access.'" *Id.* at 2913 n.46; *see also id.* at 2915 ("'[I]f they kicked me from the door, I will come through the window.'").

Despite warnings by DNC staff regarding Tamraz's background and NSC staff concerns that he should be denied access to senior government officials, *see id.* at 2911-13, "Tamraz was able to attend events with President Clinton on no fewer than six occasions from September 1995 through June 1996," *id.* at 2920.[12] After one conversation, the President asked Thomas McLarty, Counselor to the President, to look into the pipeline. Through McLarty's influence, Energy Department officials tried to

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[12] These events were "(1) a reception for the DNC's Business Leadership Forum on September 11, 1995; (2) a DNC dinner on September 15, 1995; (3) a DNC Chairman's holiday reception on December 13, 1995; (4) a DNC Trustee's dinner on March 27, 1996; (5) a Presidential coffee on April 1, 1996; and (6) a buffet dinner and private screening of the film *Independence Day* on June 22, 1996." Report at 2920.

use Tamraz's sizeable donations to change the NSC's opposition to dealing with Tamraz. *See id.* at 2921-29.

Although Tamraz was ultimately unsuccessful in persuading the government to support his pipeline, he "did succeed in subverting the policy of the U.S. Government," as established by the interagency Caspian energy working group, "to deny him access to high-level U.S. officials. Despite the working group's firm position against such access, Tamraz found access to the President of the United States to be available for a price through Donald Fowler and the DNC." *Id.* at 2930. More ominously, Tamraz used his vast contributions to "enlist[] senior [U.S.] officials in his attempt to change the working group's policy on Caspian energy issues." *Id.* Though ultimately thwarted in receiving full government support for his oil pipeline project, Tamraz was unrepentant. As he told the committee, "'I think next time, I'll give [$]600,000.'" *Id.*[13]

Although the most publicized incidents involving Tamraz concerned soft money given to the DNC, he also "openly bought access from both political parties." Minority Report at 8095. "In February 1997, Tamraz received letters from Republican Senators Trent Lott and Mitch McConnell inviting him to become a member of the Senatorial Inner Circle. . . . Senator McConnell['s] . . . letter stated that for a contribution to the Republican Party, Tamraz could discuss high-level policy issues at exclusive dinners with the Senate leadership." *Id.* at 8113 (noting, however, that Tamraz's subsequent contribution was returned). "When asked why he had contributed this time, Tamraz responded, 'you set the rules, and we are following the rules. . . . [T]his is politics as usual. What is new?'" *Id.* (alterations in original).

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[13] Ironically, "Tamraz seems to have come closer to purchasing policy concessions in the [U.S.] than he did in the unstable and corrupt new democracy of post-communist Russia," where he reportedly made an unsuccessful offer of $100 million to Boris Yeltsin's re-election campaign in exchange for endorsement of his pipeline. Report at 2930-31.

As the Tamraz saga additionally demonstrates, donors often give to both parties in order to ensure access. "In 1996, for example, corporations such as RJR Nabisco, AT&T, and Walt Disney were among the top contributors to both parties. In the words of Common Cause President Ann McBride, '[S]oft money is not about ideology. . . . It is about making sure "whoever wins, my special interest has a place at the table". . . . It is about gaining access and influence.'" *Id.* at 7517 (alterations in original). The cynicism of the Tamraz affair was perhaps best illustrated by the fact that he did not even bother to vote. Tamraz "believed himself to possess 'more than a vote' by virtue of his campaign contributions." Report at 2909.[14]

4. *Michael Kojima's Fundraising and Contributions.* Because he contributed $500,000 to the 1992 President's Dinner, Michael Kojima and his wife were placed "at the head table with President and Mrs. Bush." Minority Report at 7372. In addition, the Republican Presidential Roundtable (a Republican fundraising organization) wrote letters on Kojima's behalf to obtain meetings for him with U.S. embassy and foreign officials, to facilitate Kojima's pursuit of private business interests. *See id.* at 5416-17. In sum, "[i]n a two-year period, due to his contributor status, Kojima met President Bush on five occasions, including at an Oval Office reception; met with Vice President Quayle twice; met Cabinet members at an intimate lunch; and met multiple times with U.S. ambassadors and senior embassy personnel." *Id.* at 5428.

5. *Charlie Trie.* Charlie Trie was a former Little Rock restaurateur who contributed and raised substantial sums of money to benefit the DNC to gain access to the Clinton

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[14] "In theory, every voter is equal; the reality is that some voters, to borrow George Orwell's phrase, are 'more equal than others.' No one can deny that individuals who contribute substantial sums of money to candidates are likely to have more access to elected officials. And most of us think greater access brings greater influence." Minority Report at 4563.

White House and senior Administration officials for himself and his associates. *See* Report at 2524, 2527 ("Trie . . . managed to contribute a total of $220,000 to the DNC between 1994 and 1996," and he "made a commitment to the DNC to raise $350,000" in 1996 alone). Trie visited the White House "at least twenty-two times" from 1993 to 1996, and his Macau-based business associate, Ng Lap Seng (who actually funded Trie's contributions), visited the White House 10 times between 1994 and 1996. *Id.* at 2531-32. "Trie['s] contributions and fundraising made him a DNC Managing Trustee and member of the DNC's National Finance Board of Directors, and afforded him VIP treatment at DNC events." *Id.* at 2532 (footnotes omitted).

In addition, the committee concluded that "Trie's contributions and fundraising purchased his otherwise unwarranted appointment in 1996 to the Commission on U.S.-Pacific Trade and Investment Policy." *Id.* at 2519. Despite a disqualifying financial interest in the affairs of the commission (due to Trie's Asian business interests), and despite the fact that all slots on the commission were filled, Trie received the appointment. "In order to accommodate the White House's interest in the inclusion of Trie . . ., the President issued [an] Executive Order . . . expanding the membership of the Commission." *Id.* at 2534. The paperwork on Trie's disqualifying financial interest "simply 'fell through the cracks.'" *Id.* at 2535.[15]

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[15] Trie also arranged admission to a White House coffee for a Chinese arms dealer and advisor to the Chinese government. *See* Report at 2714 ("The President subsequently admitted his meeting with Wang Jun was highly improper."). The Committee found generally that the White House's vetting process "was essentially nonexistent." *Id.* at 753. Due to the soft money quest, "too many unsavory individuals were allowed entrance to the White House and access to President Clinton." *Id.* For example, major DNC donor Ted Sioeng, "a foreign national with suspiciously close ties to the Chinese government, sat at the head table with the President or Vice President at several fundraisers." *Id.* at 41; *see also id.* at 963-80.

6. *Johnny Chung.* Major DNC soft-money donor Johnny Chung likewise enjoyed repeated access to the White House. His "DNC contributions helped Chung obtain access to the White House at least 49 times between February 1994 and February 1996 – access that he used . . . to further his interests with foreign business clients . . . . So close was the nexus between Chung's donations and his visits, in fact, that White House officials actually collected money from him in the First Lady's office in exchange for allowing him to bring a delegation of his clients to White House events." *Id.* at 783 (footnote omitted). In Chung's own colorful and candid view, he was granted access because the "'White House is like a subway: You have to put in coins to open the gates.'" *Id.*

7. *Native American Fundraising and Access.* Native American groups found that the same principle – fundraising money for political access – operated to them as well. "It is clear that access to the DNC resulted in increased access to administration officials for tribes. And the way to get access to the DNC was to make political contributions. . . . The tribes with greater resources had many more doors opened to them." *Id.* at 3080.

For instance, the Mashantucket Pequots, owners of one of the world's largest casinos, were "assured . . . special attention from the DNC" by virtue of their "generosity to the Democratic party." *Id.* at 3075. In a briefing memorandum for a meeting between then-DNC head Don Fowler and the Pequot chairman, "Fowler was encouraged by DNC staff to ask the Pequots to contribute 'at least' $250,000 to the DNC. The memo notes that an issue of special significance for the Pequots was a provision in the 1995 budget bill that proposed a 35% tax on Indian gaming revenues. Inasmuch as the Foxwoods Resort casino [owned by the Pequot tribe] has yearly revenues of approximately $1 billion, such a tax would have had a huge impact on the tribe. The provision was removed, and, according to the memo, Fowler 'played an active role in expressing' tribal opposition regarding the tax to the Ad-

ministration and Congress. The memo exhorts Fowler to 'take credit' for that and other pro-tribal achievements." *Id.* (footnotes omitted); *see also id.* at 3076-80 ("finance officials at the DNC and Clinton Gore were [regularly] targeting various Indian tribes for contributions").

In another instance of donor access that "confirms the public's worst suspicions about how things seem to work in Washington," three impoverished bands of Wisconsin Indian tribes applied to open a casino in Hudson, Wisconsin. *Id.* at 3167; *see id.* at 3167-94. The Bureau of Indian Affairs' area office initially approved their application in November 1994 over the objections of the wealthy, neighboring tribes whose nearby gambling casinos would face competition from the applicants. "At the same time the area office decision was sent to Washington for final approval, on a separate track began a full-tilt lobbying effort *against* the decision, which involved the DNC and the White House." *Id.* at 3167.

The Report found "strong circumstantial evidence that the Interior Department's decision to deny the Hudson application was caused in large part by improper political considerations, including the promise of political contributions from opposition tribes. At a minimum, it is clear that the opposition tribes and their lobbyists activated the DNC and, to some extent, the White House, to take action on their behalf. Financial support – both past and future – was crucial to this effort." *Id.* at 3168. "According to FEC records, in the four months following the Department's denial of the Hudson application, the opposition tribes contributed $53,000 to the DNC and the [Democratic Senatorial Campaign Committee ("DSCC")]; they donated an additional $230,000 to the DNC and the DSCC during 1996, and gave more than $50,000 in additional money to the Minnesota Democratic Party." *Id.* at 45.[16]

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[16] The Minority Report contended that the denial "was based upon legitimate concerns," Minority Report at 8390, although it agreed that such incidents do create a strong appearance of impropriety, *see id.* at

The taint of wrongdoing in that episode was so strong that an independent counsel was appointed to investigate. *See Final Report of Independent Counsel In Re: Bruce Edward Babbitt* (Aug. 22, 2000). Although the independent counsel found insufficient evidence to bring a criminal bribery prosecution, its scathing conclusion about soft-money fundraising bears remembering, as it pertains directly to the types of concerns the *Buckley* Court invoked to uphold the constitutionality of FECA: "From a criminal justice perspective, as long as large sums of money outside of the regulatory authority of the campaign finance laws – i.e., 'soft money' – may be given to political parties, the possibility of attempted corruption of official actions will loom large, public confidence in the integrity of governmental decision-making will be undermined and federal prosecutors will too often be required to give extraordinary scrutiny to what should be ordinary administrative agency actions." *Id.* at 422.

B. Soft-Money Fundraising Distracts Elected Officials From Their Public Duties

The Report documented examples of how soft-money fundraising has diverted the attention of key elected officials from their public responsibilities. In a 10-month period before the 1996 election, for example, President Clinton attended more than 230 fundraising events, raising $119,000,000. *See* Report at 43.

> According to Presidential campaign advisor Dick Morris, President Clinton "would say 'I haven't slept in three days; every time I turn around they want me to be at a fund-raiser . . . I cannot think, I cannot do anything. Every minute of my time is spent at these

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8368 ("One of the most discouraging aspects of the present campaign finance system is that even public policy decisions undertaken in the utmost good-faith can take on an appearance of impropriety in the context of a system where so many of the individuals or entities likely to be affected by government actions are able to make the kind of large campaign contributions presently permitted by our system.").

> fundraisers.'" This frenzied pursuit of campaign contributions raises obvious and disturbing questions. Can any President who spends this much time raising money focus adequately upon affairs of state? Is it even possible for such a President to *distinguish* between fundraising and policymaking?

Id. (alteration in original); *see also id.* at 42 ("As Vice President Gore himself noted, 'we can raise the [necessary] money . . . ONLY IF – the President and I actually do the events, the calls, the coffees, etc.'") (alterations in original).

Former Vice President Walter Mondale testified that "'[i]t is the most degrading and humiliating thing that can happen to a public officer to have to spend a substantial chunk of his or her time pleading for money in this kind of way. . . . That is one of the most powerful arguments for repeal of the soft money loophole.'" Minority Report at 7520 (alteration in original). "In some ways, the most troubling result of the White House's and DNC's ceaseless quest for campaign funding is the great amount of time the President and the Vice President themselves actually spent raising money." Report at 42. "The bottom line is this: were it not for the lure of soft money and the relentless pressure to raise it, our nation's highest officials would have not been placed into the inappropriate situations in which the Committee too often found them. The President and the Vice-President, for example, never would have felt the need even to consider personally phoning supporters for donations, and we likely never would have seen the White House and Capitol Hill conscripted into serving the fundraising goals of the DNC, the RNC, and the two major presidential campaigns." Additional Views of Senator Lieberman at 9538.

Such frenzied pursuit of soft money fatally undermines public confidence in our political system, as examples from both parties illustrate. As one White House coffee attendee commented, "'the White House coffee was an improper

"shakedown" for money . . . in the presence of the President.'" Report at 214. Another donor found the Vice President's telephone "sales pitch . . . 'revolting,'" and still another felt the call he received had "'elements of a shakedown.'" *Id.* at 501-02. In March 1995, the National Policy Forum (a think-tank established by the RNC, *see* Report at 16) held a conference on telecommunications at which then-Senate Majority Leader Robert Dole and other Republicans spoke. *See* Minority Report at 4664. One newspaper reported: "'[E]ven though the [requested] $25,000 payment is not mandatory to attend, company representatives professed surprise at the size of the contribution request. "It's pretty astounding," said one invitee. "If this doesn't have 'payment for acces[s]' (to top GOP lawmakers) written all over it, I don't know what does."'" *Id.* (first alteration in original).[17]

II. CONGRESS HAD A COMPELLING INTEREST IN REGULATING USE OF SOFT MONEY TO FUND SHAM "ISSUE ADS"

The way soft money is spent is just as problematic as the way it is raised. During the 1996 election campaign, both the DNC and the RNC (along with corporations, unions, and other interest groups) found a gaping loophole through which they ran so-called "issue advertisements" designed to influence federal elections.[18] Under FECA, soft money cannot be used expressly to advocate the

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[17] Although candidates arguably would have to spend more time raising hard dollars if unlimited soft money could no longer influence federal elections, lower limits are less likely to place a candidate in the position of asking for massive contributions from individuals and therefore giving the appearance of being beholden to them. The BCRA's hard-money limits of $2,000 per person to a candidate and $25,000 to a national party address that concern. *See* BCRA § 307(a), 2 U.S.C. § 441a(a)(1).

[18] *See* JSSA 39sa (per curiam) ("It does not appear that prior to 1996, the practice of using issue advertising to influence federal elections was a widespread practice.").

election or defeat of a clearly identifiable federal candidate, but rather may be used only for more generic party-building activities. *See supra at* p.2.

A significant development of party-building, however, was through "issue ads," television advertisements that do not expressly advocate the election or defeat of a specific candidate. Report at 4465. Parties learned over time that a cleverly worded ad can technically meet this standard by portraying candidates in a positive or negative light "in the context of issues." *Id.* at 4478.

By the 1996 presidential campaign, "[t]he vast majority of issue ads identified specific candidates and functioned as campaign ads. . . . [Those ads] were effectively indistinguishable from candidate ads." Minority Report at 7515. Both the national parties and corporate, union, and other interest groups ran numerous such issue ads funded substantially[19] or completely with unregulated soft money. These sham ads, highly problematic in their own right because they were used to influence federal elections and not restricted to generic party-building uses, were made worse by the fact that they were often coordinated with – indeed, controlled by – the 1996 presidential campaign from which they purportedly were independent.

A. The National Parties Used Massive Amounts Of Soft Money To Fund Sham "Issue Ads"

In the 1996 election, the DNC spent approximately $44 million in soft money on issue ads, and the RNC spent approximately $24 million. *See* Report at 4482; Minority Report at 8294. At the committee hearings, Harold Ickes, President Clinton's Deputy White House Chief of Staff, responded to a question asking whether the average person would understand the DNC and RNC issue ads as suggesting a vote for Clinton or Dole: "'I would certainly

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[19] Under FECA, federal law permitted issue ads run by a national party in an election year to be paid for with 35% soft money, and the rest with hard money. *See* JSSA 33sa-34sa (per curiam).

hope so. If not, we ought to fire the ad agencies.'" Minority Report at 8286.

The President knew he was using DNC soft money to fund issue ads in the service of his re-election campaign. He told a group of major contributors to the DNC:

> "[W]e even gave up one or two of our fundraisers at the end of the year to try to get more money to the Democratic Party rather than my campaigns. My original strategy had been to raise all the money for my campaign this year, so I could spend all my [time] next year being president, running for president, and raising money for the Senate and House Committee and for the Democratic Party.
>
> And then we realized that we could run these ads through the Democratic Party, which meant that we could raise money in twenty and fifty and hundred thousand dollar lots, and we didn't have to do it all in thousand dollars. And run down – you know what I can spend which is limited by law. So that's what we've done. But I have to tell you I'm very grateful to you. *The contributions you have made in this have made a huge difference.*"

Report at 62 (emphasis added; alteration in original).

The Dole campaign adopted a similar strategy. "[T]here can be little doubt that the RNC's issue ads were intended to influence the outcome of a federal election . . . . One of those issue ads, entitled 'The Story,' was nothing more than a biography of Bob Dole." *Id.* at 4014.[20] Indeed, an

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[20] "The Story" stated as follows (Report at 4014) (alteration in original):

"Audio of Bob Dole: We have a moral obligation to give our children an America with the opportunity and values of the nation we grew up in.

Voice Over: Bob Dole grew up in Russell, Kansas. From his parents he learned the value of hard work, honesty and responsibility.

internal RNC memorandum concluded that "'[m]aking this spot pass the issue advocacy test may take some doing.'" *Id.* at 4015; *see also id.* at 4014-15 (discussing another RNC issue ad that "focused on personality traits [of Bill Clinton] rather than public issues"); Minority Report at 8301 (quoting Dole campaign manager as saying, "'[w]e went out in April and May and raised $25 million for the party, of which about $17, $18, or $19 million was put into party building ads, which were Bob Dole in nature'").

While being interviewed by Ted Koppel of ABC, Dole candidly admitted that, although his campaign did not have enough money to pay for advertising, the RNC would be running "generic" ads on his behalf (Report at 4153-54):

> "Q You said generic spending, and then it says 'Bob Dole for president', is that considered generic spending?
>
> SEN. DOLE: It doesn't say 'Bob Dole for president.' It has my – it talks about the Bob Dole story. It also talks about issues. It never mentions the word that I'm – it never says that I'm running for president, though I hope that it's fairly obvious, since I'm the only one in the picture! (Laughter)."

So when his country called . . . he answered. He was seriously wounded in combat. Paralyzed, he underwent nine operations.

Audio of Bob Dole: I went around looking for a miracle that would make me whole again.

Voice Over: The doctors said he'd never walk again. But after 39 months, he proved them wrong.

Audio of Elizabeth Dole: He persevered, he never gave up. He fought his way back from total paralysis.

Voice Over: Like many Americans, his life experience and values serve as a strong moral compass. The principle of work to replace welfare. The principle of accountability to strengthen our criminal justice system. The principle of discipline to end wasteful Washington spending.

Voice of Bob Dole: It all comes down to values. What you believe in. What you sacrifice for. And what you stand for."

B. The National Parties Coordinated Sham "Issue Ads" With Their Presidential Candidate's Campaign

In the 1996 campaign, the White House "operated the [DNC] party apparatus as a slush-fund for the President's re-election campaign." Report at 23. The Clinton campaign and the DNC engaged in "unprecedented" coordination "over the content, placement, and production of advertisements. . . . By the end of the campaign, any distinctions remaining between the White House, the DNC, and Clinton/Gore had been obliterated." *Id.* at 107.

The soft money the President and Vice President had been so instrumental in raising for the DNC was used to fund DNC issue ads over which "the President himself exercised total control." *Id.* at 34. According to Dick Morris, President Clinton's campaign advisor, "the President 'was as involved [in the DNC and Clinton/Gore '96 media campaign] as any of his media consultants were,' '[e]very line of every ad came under his informed, critical, and often meddlesome gaze,' such that '[t]he ads [for both the DNC and Clinton/Gore '96] became . . . the work of the President himself.'" *Id.* at 122 (alterations in original); *see also id.* at 123-25 (detailing close involvement of Vice President Gore and other White House officials). The coordination even "extended to the exact day the media team chose to run a DNC advertisement versus a Clinton/Gore '96 advertisement," *id.* at 118, and both the DNC and Clinton/Gore '96 "employed all the same consultants, pollsters, and media producers," *id.* at 34. One meeting agenda candidly stated: "'[u]se DNC to pay for it, we [the joint White House, DNC and Clinton/Gore media team] control production.'" *Id.* at 118-19 (alterations in original).

Although such close coordination was arguably illegal under FECA, the Attorney General declined to appoint an independent counsel. She opined that "'FECA does not prohibit the coordination of fundraising or expenditures between a party and its candidate for office.'" *Id.* at 4528.

The Attorney General's opinion and the perception created by these fundraising scandals thus made clear that Congress had to close this enormous loophole. *See* Minority Report at 8290 ("By permitting such coordinated efforts to raise soft money and spend it on political activities that advance the interests of presidential campaigns, the federal election laws create a tremendous loophole to both contribution limits and spending limits.").

The committee's investigation also showed that, to a lesser degree, the Dole campaign and RNC coordinated ads; indeed, their media campaigns came under common control. The Minority Report concluded that Senator Dole's "campaign manager, chief fundraiser, media consultant, and pollster controlled the RNC's media campaign." *Id.* at 8297; *see also id.* at 8302 ("[F]ormer Dole staffers who were on the RNC payroll ran every aspect of the bankrupt Dole for President campaign, from planning campaign events for Dole to raising money for a multi-million-dollar ad campaign designed to boost the senator's candidacy."). Moreover, the RNC's issue ads were typically run (like the DNC ads) only in "battleground" states "where Clinton and Dole were close in the polls." *Id.* at 8299 ("[T]he criterion used by the RNC and the Dole campaign for deciding where to run issue ads was whether the ads would help Senator Dole win electoral votes.").

C. Both Parties Shifted Soft Money From National To State Party Coffers To Fund More Sham "Issue Ads"

Pre-BCRA law permitted issue ads run by a national party in an election year to be paid for with 35% soft money. *See* JSSA 33sa-34sa (per curiam). Because FEC regulations permitted state and local parties to fund issue ads with more than 35% soft money, *see id.* at 34sa-36sa & nn.14-15, national party committees often transferred soft money to them. "Substantial amounts of such transfers are made to state and local political parties for 'generic voter activities' that in fact ultimately benefit federal

candidates because the funds for all practical purposes remain under the control of the national committees. The use of such soft money thus allows more corporate, union treasury, and large contributions from wealthy individuals into the system." Report at 4466.

The size of such transfers is truly massive. In 1996, the Democratic committees transferred as much as $64 million in soft money to state parties, nearly nine times more than in 1992. *See id.* at 4467; Minority Report at 7520. The Republican committees transferred $50 million in soft money to state parties, or almost 10 times more than in 1992. *See* Minority Report at 7520. The transfers did not generally entail any loss of control over how the transferred soft money was spent. As one RNC memorandum explains (*id.* at 8300):

> "Some have voiced concern that buying through the state parties could result in a loss of control on our part. There is absolutely no reason to be concerned about this. As was demonstrated in our efforts recently in the [California] and [Oregon] special elections, our field staff is fully able to insure that state parties make good on any arrangement we make with them. This is simply a book keeping hassle, but not in anyway [*sic*] a reason not to proceed."

State parties thus "acted as mere conduits, exercising no independent judgment over the ads." *Id.*; *see also* Report at 4468 ("the state entities operated as little more than a pass-through for the DNC to pay for the production and broadcasting of ads by the [same] firm" that produced DNC and Clinton/Gore '96 ads).[21] Indeed, the communica-

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[21] This mechanism was also used in elections at other levels. The DNC, for example, accepted a $230,000 soft-money contribution and shortly thereafter transferred $215,000 to the Kentucky Democratic Party, "which in turn paid for an advertising blitz that closely paralleled the themes that [the donor's] favored candidate used in campaigning for the U.S. Senate." Report at 4467; *see also id.* at 4467-68 & n.32 (detailing incident where "the DNC saved $122,810 in hard

tions director for the Florida Democratic Party commented with regard to ads run under the state party's name: "'Those aren't ours; those are the DNC's.'" *Id.*

D. Non-Party Groups Used Massive Amounts Of Soft Money To Fund Sham "Issue Ads"

The loophole identified and exploited by the national parties was likewise used by a wide array of advocacy groups to influence the 1996 election. Such groups spent an estimated $55-70 million on political advocacy campaigns, or "roughly one-seventh of the 400 million dollars expended on political advertising during the 1996 elections by parties, candidates and others." Report at 3993. A substantial (though indeterminate) portion of those funds was spent on issue ads meant to influence federal elections, yet, like the ads run by the national parties, avoided using magic words of express advocacy (and thus arguably avoided being deemed in-kind contributions subject to hard-money limits). *Id.*

In addition, those expenditures were often coordinated to varying degrees with the 1996 presidential campaigns or the national parties. For example, "White House aides and the AFL-CIO carefully reviewed each other's advertisements and coordinated their timing and placement." *Id.* at 49; *see also id.* at 3997 ("Evidence . . . indicates [that AFL-CIO] programs were conceived, designed and implemented to defeat Republican Members of Congress during the 1996 federal elections."); *id.* at 3997-4006.[22]

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dollars by using the Michigan Democratic Party as a conduit to pay for . . . advertisements" produced by the DNC's own media consultant).

[22] "[I]n August 1995 [Deputy White House Chief of Staff Harold] Ickes organized and chaired a White House meeting in the Roosevelt Room between representatives of the DNC and Clinton/Gore '96 media team and approximately seven representatives of various labor unions. . . . [B]oth the union representatives and the DNC and Clinton/Gore '96 media team displayed advertisements each had run or were considering running. [Clinton presidential campaign advisor Dick]

The minority found that a conservative group, The Coalition: Americans Working for Real Change, "was formed to counter-balance issue ads run by the AFL-CIO. To do so, it reportedly spent at least $4.5 million, supported 23 Republican incumbents, and criticized the voting records of four Democrats in tight races. The Coalition's ads also contained nearly identical language to that used in ads broadcast by the National Republican Congressional Coalition ("NRCC"), a division of the RNC. In addition, the Coalition's ads were run at the same time as the NRCC's ads and in districts where the Republican incumbent's seat was vulnerable." Minority Report at 8944 (footnotes omitted).

The minority further found that "[t]he issue advocacy loophole was also exploited by Triad Management Services, . . . [which] channeled millions of dollars from its backers to two tax-exempt groups it had established for the sole purpose of running attack ads against Democratic candidates under the guise of 'issue advocacy.' By operating this way, Triad and its financial backers avoided the disclosure and campaign contribution limits of the federal election laws." *Id.* at 4569. For example, under the guidance of Triad, another nonprofit named Citizens for Reform with no previous record and "no . . . offices, staff, or even telephones," *id.* at 6301, spent $2 million to run television ads on congressional races from Kansas to Texas.[23]

Morris testified that . . . 'It was a full briefing of us by them on their media plans.'" Report at 128 (footnote omitted).

[23] The following ad, for example, aired during the final weeks of the Montana congressional race between Bill Yellowtail and Rick Hill:

> "Who is Bill Yellowtail? He preaches family values but took a swing at his wife. And Yellowtail's response? He only slapped her. But 'her nose was not broken.' He talks law and order . . . but is himself a convicted felon. And though he talks about protecting children, Yellowtail failed to make his own child support payments – then voted against child support enforcement. Call Bill Yellowtail. Tell him to support family values."

III. THE BCRA ADDRESSES THE SOFT-MONEY AND ISSUE ADVERTISEMENT ABUSES DOCUMENTED IN THE REPORT

The major problems documented in the Report are addressed in and fully support the BCRA. The Report detailed potential reforms, including banning soft money at the national and state party levels and restricting sham issue advocacy by nonparty groups. *See* Report at 4468-70, 4480-81, 4485-86, 4491-94; *id.* at 4492 ("A ban on the raising of soft money by national party committees effectively deals with the use of union and corporate general treasury funds in the federal political process only if it" requires funding of candidate-specific ads with hard money, such as that contributed to a political action committee.). The Minority Report likewise recommended that Congress both "[e]liminate [s]oft [m]oney . . . contributions to political parties from individuals, corporations and unions" and enact "reforms addressing candidate advertisements masquerading as issue ads." Minority Report at 9394.

The BCRA addresses both problems. Title I regulates the uses by political parties of soft money, whereas Title II attempts to prohibit labor union and corporate treasury funds "from being used to run issue advertisements that have an ostensible federal electioneering purpose." JSSA 47sa. *See* BCRA §§ 101-103 (Title I), 201-214 (Title II).

The legislative history shows that Congress relied substantially on the Report in passing the BCRA.[24] Senator

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Minority Report at 6305 (alteration in original); *see also* Report at 4007. Although the group was credited with helping Hill beat Yellowtail, it never disclosed how much it spent or the sources of its funds. *See* Robert P. Meier, Comment, *The Darker Side of Nonprofits: When Charities and Social Welfare Groups Become Political Slush Funds,* 147 U. Pa. L. Rev. 971, 990 n.117 (1999).

[24] The BCRA "legislative process took over six years of study and reflection by Congress." JSSA 482sa (Kollar-Kotelly); *see id.* at 482sa n.1 (citing numerous campaign finance reform bills introduced over the last six years). Although the Senate and House bills ultimately

Feingold recounted that, "in the wake of the Thompson investigation, we reluctantly concluded that we needed to first focus our efforts on closing the biggest loopholes in the system: the soft money and the phony issue ads." 148 Cong. Rec. S2104 (Mar. 20, 2002).

Senator Lieberman likewise described his "new sense of commitment in 1997, when the Governmental Affairs Committee conducted its year-long investigation into campaign finance abuses in the 1996 Federal elections. With the passage of time, the shock of that investigation's revelations have started to fade. But it is critical that we remember them because they represent precisely what is most wrong with the system we plan to change and

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enacted as the BCRA were not accompanied by explanatory committee reports, members of Congress frequently invoked the Thompson Committee Report in floor debates as support for the legislation. *See, e.g.*, 147 Cong. Rec. S3251 (Apr. 2, 2001) (Sen. Thompson) ("The Final Report of the Senate Governmental Affairs Committee's year-long Special Investigation documents numerous examples of actual and apparent corruption resulting from the solicitation and contribution of soft money. . . . The McCain-Feingold bill will restore a campaign finance system that has been completely thwarted by loopholes created in the late 1970s."); *id.* at S3138 (Mar. 29, 2001) (Sen. Levin) ("The 1997 Senate investigation collected ample evidence of campaign abuses, the most significant of which revolved around the soft money loophole. Soft money contributions of hundreds of thousands, even millions, of dollars, were shown to have undermined the contribution limits in Federal law and created the appearance of corruption in the public's eye. The Republican and Democratic national political parties that solicit and spend this money use explicit offers of access to the most powerful, elected officials."); *id.* at S2463 (Mar. 19, 2001) (Sen. Levin) (explaining how hearings of the committee exposed how politicians had "trashed the limits on contributions that exist in the law" and stating desire that, "[h]opefully, McCain-Feingold is going to restore those limits"); 148 Cong. Rec. S2133-34 (Mar. 20, 2002) (Sen. Collins) ("The problem with soft money was painfully evident during the 1997 hearings . . . . We heard from individual after individual who testified about giving hundreds of thousands of dollars in order to buy access."); *id.* at S2138-41 (Sen. McCain) ("The Senate Governmental Affairs Committee investigation found flagrant abuses by both Presidential campaigns in the 1996 elections.").

precisely what helped to begin in full force the effort that is about to reach a successful conclusion." *Id.* at S2137.

In the wake of the campaign finance meltdown in the 1996 elections, a Gallup poll showed that 59% of Americans believed elections were "generally for sale to the candidate who can raise the most money," half thought the President "was willing to change government policy in exchange for donations," and 77% considered national leaders to be "mostly influenced by the pressure they receive on issues from major campaign contributors." The Gallup Organization, *Americans Not Holding Their Breath on Campaign Finance Reform* (Oct. 11, 1997). A paltry 19% believed elected officials were influenced by what is in the best interests of the country. *Id.* As the court below recognized, more recent polls show these perceptions linger unabated. *See* JSSA 628sa (Kollar-Kotelly), 1292sa (Leon).

The investigation by the Senate Governmental Affairs Committee in 1997 and 1998 established a documentary and testimonial record that proved crucial in convincing legislators of the need to close the loopholes in FECA that had so badly distorted our electoral system and "to restore the campaign finance system to what was intended prior to the appearance and exploitation of the soft money loophole." 147 Cong. Rec. S3251 (Apr. 2, 2001) (Sen. Thompson). That record exposed the worst of our system: meetings and sleepovers in the White House for specially chosen contributors of high-dollar soft money, the alteration in policy to meet the demands of donors, and the use of soft money for advocacy purposes at an unprecedented scale. In seeking to return the system to what it had been under FECA before those loopholes were discovered, Congress had a more than ample evidentiary record and a constitutionally proper mandate under *Buckley* to enact the BCRA.

CONCLUSION

Amicus respectfully urges this Court to uphold the constitutionality of BCRA Titles I and II.

Respectfully submitted,

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August 5, 2003