MCCONNELL V. FEDERAL ELECTION COMMISSION: THE PROBLEM OF ERADICATING CAMPAIGN FINANCE CORRUPTION

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I. INTRODUCTION

Warren Buffett, investment magnate and Chief Executive Officer of Berkshire Hathaway, wrote an editorial in the *New York Times* saying political contributions, as investments, were far undervalued.[1] Buffett wrote that a campaign finance contribution could buy a great deal of political influence: "As a fund-raising senator once jokingly said to me, 'Warren, contribute ten million dollars and you can get the colors of the American flag changed.'"[2]

For almost a century, Congress enacted campaign finance legislation in an effort to eradicate the perceived corruption flowing from large campaign contributions.[3] Its most recent attempt was the Bipartisan Campaign Reform Act of 2002 ("BCRA"),[4] which addressed two major sources of contention in campaign funding: (1) the ease with which candidates could circumvent spending limits through soft money donations and (2) the prevalence of televised issue advertisements purchased with soft money, and the misleading effects of these advertisements on the voting public.[5]

Immediately after the BCRA became law, its constitutionality was challenged in *McConnell v. Federal Election Commission*,[6] in which the

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1. Warren E. Buffett, Op-Ed., *The Billionaire's Buyout Plan*, N.Y. TIMES, Sept. 10, 2000, at D14.
2. *Id.*
3. *See* McConnell v. FEC, 540 U.S. 93, 115 (2003).
4. Pub. L. No. 107-155, 116 Stat. 81 (codified in scattered sections of 2, 18, 28, 36, and 47 U.S.C.).
5. *McConnell*, 540 U.S. at 129–30, 132.
6. *Id.* at 132.

Supreme Court of the United States upheld all of the Act's major provisions.[7] This Article will examine four main empirical claims the Court makes in *McConnell*: (1) wealthy campaign donors are able to buy greater access to politicians with campaign contributions, (2) limits on freedom to associate within party committees are necessary in order to prevent campaign finance abuses, (3) reductions in campaign funding will not inhibit political campaigns, and (4) those who purchase campaign advertisements must be identified so voters are not misled by the advertisements' messages. The first two claims are diagnostic; they identify problems with the pre-BCRA political system. The final two claims are predictive; they examine the BCRA's potential to reform campaign finance. Analyzing these four claims will provide insight into the Court's beliefs about money's corruptive effect on politics and the BCRA's role in remedying that corruption.

In its analysis of the BCRA, the Supreme Court shifts between two definitions of corruption.[8] The first definition describes a system in which donors can purchase political influence by making large campaign contributions.[9] However, the second turns on little more than the appearance of impropriety: It describes a campaign finance system in which large contributions merely facilitate access to public officials.[10] While this allows wealthy donors unequal access to representatives, some say it results in no unfair influence over the legislative process.[11] While it presents many examples of the second definition of corruption, the Court is unable to provide hard evidence that donors were able to purchase political influence with campaign contributions before Congress enacted the BCRA.[12]

The Court is able to capture both types of corruption, however, by stating that it wants to eradicate both "corruption and the appearance of corruption" in politics.[13] While granting donors unequal access does not necessarily influence politicians' legislative decisions, it gives rise to the appearance that they are being swayed by contributors. Further, the research presented indicates that it is nearly impossible to separate access from influence.

The pre-BCRA campaign finance laws could not address the many

7. *Id.* at 132–33.
8. *See id.* at 143.
9. *Id.*
10. *Id.* at 119.
11. *See id.* at 119 n.5 ("[T]he average American has no significant role in the political process.").
12. *Cf. id.* at 150–51, 155–56.
13. *Id.* at 142.

instances where access led to influence because they permitted campaign spending practices that resulted in the appearance of corruption.[14] Statements from congressmen and lobbyists, as well as reports from independent research groups, raise a strong inference that the pre-BCRA system of campaign finance regulation did not sufficiently curb corruption.[15] Thus, the broad definition of corruption in *McConnell* was the Court's only means of curbing both actual and perceived corruption. By aiming to eradicate corruption and the appearance of corruption, which are both sufficient to indicate the presence of campaign spending abuses, Congress took an important step in changing the way campaigns are conducted.

II. BACKGROUND

A. The Federal Election Campaign Act of 1971

The BCRA is composed of amendments to the Federal Election Campaign Act of 1971 ("FECA"),[16] the Communication Act of 1934,[17] and other portions of the United States Code.[18] It is the most recent attempt by Congress "to purge national politics of what was conceived to be the pernicious influence of 'big money' in campaign contributions."[19]

Modern campaign finance reform became a national priority when Congress passed the FECA[20] in 1972 in an effort to limit the effect of big contributors on politicians.[21] In order to increase public awareness of the individuals and corporations donating significant funds to campaigns, the FECA required greater disclosure of campaign contributions and prohibited contributions made in another person's name.[22] To limit the amount of money businesses could give to candidates, the FECA also prohibited corporations and unions from using general treasury funds for

14. *See infra* Part II (providing history of campaign spending before the enactment of the BCRA).
15. *McConnell*, 540 U.S. at 183.
16. 2 U.S.C. § 431–442 (Supp. V 2007).
17. 47 U.S.C. § 315 (Supp. V 2007).
18. *McConnell*, 540 U.S. at 114.
19. United States v. Auto. Workers, 352 U.S. 567, 572 (1957).
20. Pub. L. No. 92-225, 86 Stat. 3 (1972).
21. *See McConnell*, 540 U.S. at 114.
22. *See* Pub. L. No. 92-225, 86 Stat. 3 (1972). Under this Act, disclosure was required of all contributions exceeding $100 and all expenditures by candidates and political committees whose spending exceeded $1,000 per year. *Id.*

political contributions and expenditures.[23]

Under the FECA, businesses were required to donate through segregated funds known as political action committees ("PACs"), which had specific disclosure requirements.[24]

Just two years later, Congress amended the FECA in order to close loopholes candidates used to exceed the FECA's spending limits.[25] The 1974 amendments prevented the formation of unlimited political committees for fundraising purposes, which allowed candidates to circumvent limits on individual committees' receipts and disbursements.[26] The 1974 amendments also introduced contribution limits that allowed individuals to donate up to one thousand dollars to a single candidate, but no more than twenty-five thousand dollars in an election cycle.[27] Finally, the 1974 amendments imposed ceilings on how much candidates could spend on national conventions, required reporting and disclosure of contributions exceeding certain limits, and established the Federal Election Commission ("FEC") to enforce the FECA and future campaign finance legislation.[28]

B. *Buckley v. Valeo*'s Challenge to the FECA

The amendments to the FECA were challenged in the 1974 case *Buckley v. Valeo*.[29] In its decision, the Court struck down limits on individual expenditures, which were used to fund political communication.[30] Additionally, the Court upheld limits on contributions to national party committees, or hard money contributions, in an effort to reduce the effects of large contributions on federal campaigns.[31] Donors easily circumvented these restrictions after *Buckley*, however, by making large soft money contributions to state and local political parties, which were then used to influence federal

23. *McConnell*, 540 U.S. at 118.
24. *Id.*
25. *Id.* at 118–19.
26. *See id.* at 118.
27. *Id.*
28. *Id.* at 118–19.
29. 424 U.S. 1, 5 (1976).
30. *See id.* This communication is comprised largely of televised campaign advertisements. *See id.* at 19.
31. *See id.* at 28–29.

elections.[32]

Individuals and corporations who had reached the permissible limits on hard money donations were permitted to donate unlimited amounts of soft money to state and local parties, which were "unaffected by [the] FECA's requirements and prohibitions."[33] The FEC allowed political parties to fund "mixed purpose activities[,] including get-out-the-vote drives and generic party advertising," partly with soft money.[34]

C. Post-*Buckley* Campaign Spending Abuses and the BCRA

The *Buckley* decision created a soft money loophole that allowed contributors to fund limitless issue advertisements, so long as they did not expressly advocate for or against a certain candidate.[35] To help political parties distinguish between issue advertisements and express advertisements, the FEC devised a bright-line test that, in the view of many critics, opened the floodgates for abuse.[36] It held that advertisements using the words "vote for," "vote against," or "elect" constituted express advocacy and could only be funded with hard money.[37] All other electioneering communications could be funded with soft money.[38] With such a narrow definition of express advocacy, political parties easily circumvented the hard money restrictions and funded much of their campaign advertising with soft money.[39]

In 1998, the Senate Committee on Governmental Affairs issued a report on campaign finance abuses after investigating spending in the 1996 election.[40] The Committee concluded that "the 'soft money loophole' had led to a 'meltdown' of the campaign finance system that had been intended 'to keep corporate, union, and large individual

32. *McConnell*, 540 U.S. at 122.
33. *Id.*
34. *Id.* at 123 (citing FEC Advisory Op. 1978-19; FEC Advisory Op. 1979-17).
35. *See id.* at 126.
36. *Id.*
37. *Id.*
38. *See id.*
39. *See id.* at 126–27. "Little difference existed, for example, between an ad that urged viewers to 'vote against Jane Doe' and one that condemned Jane Doe's record on a particular issue before exhorting viewers to 'call Jane Doe and tell her what you think.'" *Id.*
40. *Id.* at 129 (referencing S. REP. NO. 105-167 (1998)).

contributions from influencing the electoral process.'"[41] After *Buckley*, the Committee found that big donors had contributed exponentially more soft money as the FEC permitted more liberal use of funds.[42] When the BCRA was passed in 2002 in an effort to remedy campaign finance abuses, it was no surprise that the crux of the bill focused on soft money and the issue advertisements funded by soft money.

The BCRA prohibited national parties, their committees, and their agents from raising, spending, receiving, or directing any soft money,[43] and it imposed greater restrictions on campaign advertisements, including disclosure and reporting requirements for electioneering communications.[44] These restrictions were intended to "'shed the light of publicity' on campaign financing" and help voters make better-informed decisions.[45]

Immediately after the BCRA was enacted, the Act was challenged for potential infringements on constitutional rights, including freedom of speech and association, in *McConnell*.[46] The plaintiffs claimed that the restrictions imposed by the BCRA violated their rights to freedom of speech and association.[47] The Court, however, held that the BCRA's restrictions on soft money donations and issue advertisements were justified in order to prevent "actual and apparent corruption of federal candidates and officeholders."[48] The following analysis will explore the Court's claims in *McConnell* in an effort to determine the extent to which large campaign contributions have a corrupting effect on politics.

41. *Id.* (quoting S. REP. NO. 105-167 (1998)).

42. *Id.* at 124. "Of the two major parties' total spending, soft money accounted for 5% ($21.6 million) in 1984, 11% ($45 million) in 1988, 16% ($80 million) in 1992, 30% ($272 million) in 1996, and 42% ($498 million) in 2000."

43. *See* 2 U.S.C. § 441i(a) (2006).

44. *See id.* at 224–25.

45. *See id.* at 231 (quoting Buckley v. Valeo, 424 U.S. 1, 81 (1976)).

46. *See McConnell*, 540 U.S. at 140 n.42.

47. *See id.* at 159.

48. *Id.* at 143.

III. ANALYSIS

A. Does Money Have a Corrupting Influence on Politics?

1. Large Campaign Contributions May Allow Donors to Buy Legislative Influence

The major assumption underlying the *McConnell* decision is that money has a corrupting effect on politics and, by regulating campaign spending, Congress can halt corruption and the appearance of corruption in election cycles.

The Court found that, by upholding the provisions of the BCRA, it was bolstering Congress's "fully legitimate interest in maintaining the integrity of federal officeholders and preventing corruption of [the] federal electoral processes."[49]

In *McConnell*, the Court operates under the belief that the "political potentialities of wealth" have "untoward consequences on the democratic process."[50] The Court quotes former Senator John Bankhead, who asserted that "money is the chief source of corruption" in politics, and that large contributions can create obligations between political parties and donors.[51]

Candidates must raise a significant amount of money to run a campaign with any hope of success.[52] The New York City Bar Association, in its report on campaign finance reform, stated:

Money buys all the things crucial for a modern election campaign—broadcast and radio air time; the printing and mailing of campaign literature; transportation costs; the services of campaign professionals for crafting the campaign message, conducting polls, and producing campaign advertisements; the salaries of campaign workers; the rent for campaign offices; the costs of data-processing equipment and computer time; even the expenses incurred in raising the funds necessary to pay

49. *Id.* at 187.

50. United States v. Auto. Workers, 352 U.S. 567, 577–78 (1957).

51. *McConnell*, 540 U.S. at 116–17 n.2 (quoting 86 CONG. REC. 2720 (1940)).

52. *See* ASS'N OF THE BAR OF THE CITY OF N.Y., COMM'N ON CAMPAIGN FIN. REFORM, DOLLARS AND DEMOCRACY: A BLUEPRINT FOR CAMPAIGN FINANCE REFORM 84 (2000), *available at* http://www.abcny.org/Publications/reports/show_html.php?id=44 (last visited Nov. 9, 2008) [hereinafter CITY OF N.Y. BAR, DOLLARS].

for the other campaign expenditures. These services are unlikely to be provided by volunteers. They require money.[53]

Given the crucial role money plays in running a successful campaign, there are major incentives for politicians to raise as much as possible and by any means necessary.[54] This is particularly true for first-time candidates, or those challenging incumbents whose names are already familiar to the voting public.[55] Without money, these candidates would have no hope of election.[56]

However, the dissent in *McConnell* stated that quid pro quo political relationships, including the relationship between contributors and the politicians they support, did not necessarily raise an inference of corruption.[57] Congressmen are constantly making quid pro quo agreements with their colleagues by promising to support legislation in exchange for support of their own pet projects.[58] Justice Kennedy said that voters also exercise quid pro quo influence over candidates: "It is well understood that a substantial and legitimate reason, if not the only reason, to cast a vote for, or to make a contribution to, one candidate over another is that the candidate will respond by producing those political outcomes the supporter favors. Democracy is premised on responsiveness."[59] However, the majority's holding is based on the premise that there is an important difference between the support that one buys with a vote and the support that one buys with a large campaign contribution.[60]

The obvious difference between a quid pro quo vote and a quid pro quo campaign contribution is that all eligible Americans can vote, while not all Americans can make significant campaign contributions. Moreover, while both voters and donors can express dissatisfaction with a candidate by withdrawing their support—either ideologically or monetarily—there is overwhelming evidence that politicians are more responsive to requests from donors than they are from voters.[61] Former Senator Barry Goldwater[62] once said, "As far as the public is concerned, it is the

53. *Id.*
54. *See id.* at 91.
55. *Id.*
56. *See* McConnell v. FEC, 540 U.S. 93, 185 (2003).
57. *See id.* at 297 (Kennedy, J., dissenting).
58. *See id.*
59. *Id.*
60. *See id.*
61. *See id.* at 144 (majority opinion).
62. Senator Goldwater, a Republican, represented Arizona in the United States Senate.

PACs and the special interests they represent, and not the people, who set the country's political agenda and control a candidate's position on the important issues."[63]

The Court noted that some campaign contributors often give money to both parties' candidates, so they have a supporter in Congress regardless of who wins the election.[64] This example of so-called bet-hedging shows that many corporate and individual donors are more interested in buying friends—and influence—than supporting candidates with a shared ideology.

While buying friends in politics is not inherently corrupt, the Court is concerned that donors who give to both parties' candidates are merely trying to buy legislative support, no matter who wins the election.[65]

The value of these "friendships" cannot be underestimated. The major donor programs at the Republican National Committee ("RNC") promise contributors special access to high-ranking party officials, including elected representatives.[66] These programs, called "Team 100" and the "Republican Eagles," require large, sustained donations from participants.[67] During the 1996 election cycle, Team 100 asked for an initial contribution of one hundred thousand dollars, and then twenty-five thousand dollars per year for the next three years.[68] Republican Eagles paid fifteen thousand dollars in annual contributions.[69] While the donation schedule was aggressive, the RNC delivered on its promise. The Committee's chairman escorted a donor personally to meetings, which "'turned out to be very significant in legislation affecting public utility holding companies' and made the donor 'a hero in his

63. 132 CONG. REC. S990 (daily ed. Jan. 27, 1986) (statement of Sen. Goldwater).

64. *McConnell*, 540 U.S. at 124–25. The Court states:

> Moreover, the largest corporate donors often made substantial contributions to both parties. Such practices corroborate evidence indicating that many corporate contributions were motivated by a desire for access to candidates and a fear of being placed at a disadvantage in the legislative process relative to other contributors, rather than by ideological support for the candidates and parties.

Id.

65. *See id.* at 125.

66. *Id.* at 130.

67. *Id.*

68. *Id.* at 130 n.30.

69. *Id.*

industry.'"[70] In this instance, sustained donations guaranteed a donor access to political officeholders and influence over legislation. Anecdotal evidence that money can buy both friendship and legislative support provides perhaps the strongest support for the BCRA's campaign spending limits.

2. While Arguably Necessary, Individual Spending Limits Affect Ideological Donors' Ability to Contribute to Campaigns in Ways They Find Meaningful

Some studies indicate that not all campaign contributors are trying to buy influence.[71] The New York City Bar Association's Commission on Campaign Finance Reform, after studying corruption in campaign contributions, concluded that ideological donations—or donations from contributors who say they are not interested in buying influence or legislative support—are not intended to corrupt and do not have a corrupting influence on politicians.[72]

The report found that limiting these donors' contributions simply deprives them of the opportunity to express their ideological support through donations.[73]

The Court, however, has held that limitations on ideological contributions do not appreciably restrict donors' freedom of expression.[74] In *Buckley* the Court held, "The quantity of communication by the contributor does not increase perceptibly with the size of the contribution, since the expression rests solely on the undifferentiated, symbolic act of contributing."[75] The Court found that contribution size is a "rough index of the intensity of the contributor's support for the candidate," and that limiting monetary contributions does nothing to discourage contributors from discussing political issues and candidates with friends, coworkers, and so forth.[76]

70. *Id.* at 130–31 (quoting S. REP. NO. 105-167 (1998)).

71. CITY OF N.Y. BAR, DOLLARS, *supra* note 52, at 93.

72. *Id.* The New York City Bar Association defined a corrupt contribution as one given with the intent to influence legislation. *Id.*

73. *See id.* at 220–21.

74. *See* McConnell v. FEC, 540 U.S. 93, 135 (2003) (citing Buckley v. Valeo, 424 U.S. 1, 21 (1976) (per curiam)).

75. *Buckley*, 424 U.S. at 21.

76. *Id.* The Court notes:

A limitation on the amount of money a person may give to a candidate or campaign organization thus

The Court's holding on this issue could be influenced by the small number of campaign donors considered true ideological contributors. An independent research study indicated that only 4.7 percent of donations to the Republican and Democratic parties in the 2006 election cycle were given by ideological donors, whereas 75.1 percent of contributions were given by businesses that were not considered ideological donors.[77] It appeared that most ideological support took place outside of the realm of campaign contributions, and that caps on individual donations have a relatively small effect on ideological expression.[78]

In its holding on individual contribution limits, the Court left ideological donors little choice in how they can express their support for favored candidates. The Court's rationale in *Buckley*, and echoed in *McConnell*, is that ideological supporters can back candidates without using money, for instance, by volunteering at a campaign headquarters or displaying political signs in their yards.[79] But because money is crucial to running a successful political campaign, it is easy to see why supporters believe a large monetary donation is worth more than a few days of volunteering.[80] The research presented in this section indicates that some, if not the majority, of campaign contributors donate with the intent of influencing legislation. Considering the Court's dual definitions of corruption, however, these donations should not be limited unless they result in undue access to, or influence over, politicians. Thus, it is necessary to further study the empirical claims in the *McConnell* decision in order to determine if the regulations imposed by the BCRA are justified.

involves little direct restraint on his political communication, for it permits the symbolic expression of support evidenced by a contribution but does not in any way infringe the contributor's freedom to discuss candidates and issues.

Id.

77. Congressional Races: The Big Picture, http://opensecrets.org/overview (follow "2006 elections" hyperlink) (last visited Nov. 21, 2006).

78. This is especially true when considering that just one-fourth of one percent of the American population donates to campaigns and that those donors mostly represent a rich minority of Americans. *See* Bailey, Do Campaign Contributions Lead to Policies that Favor the Wealthy? An Examination of Taxing and Spending in the American States 16 (Mar. 2001) (unpublished manuscript, on file with author); *see also* Spencer Overton, *The Donor Class: Campaign Finance, Democracy, and Participation*, 153 U. PA. L. REV. 73, 85 (2004).

79. *See Buckley*, 424 U.S. at 21.

80. CITY OF N.Y. BAR, DOLLARS, *supra* note 52, at 84.

B. Claim I: Wealthy Campaign Contributors Can Buy Access to Elected Officials Thus, They Have Opportunities to Influence Legislation That Most Citizens Cannot Afford.

Former Senator Goldwater once wrote:

> To be successful, representative government assumes that elections will be controlled by the citizenry at large, not by those who give the most money. Electors must believe their vote counts. Elected officials must owe their allegiance to the people, not to their own wealth or to the wealth of interest groups who speak only for the selfish fringes of the whole community.[81]

The *McConnell* decision is based on the claim that, without spending limits, politicians are tempted to legislate on behalf of the moneyed few who make large donations to the detriment of constituents who cannot express their support through visible contributions.[82] In *McConnell*, the Court stated that big businesses and unions are able to buy greater access or special favors from candidates.[83] If this is the case, the wealthy minority donating to campaigns do more than help candidates disseminate their political platforms.[84] If it is possible to buy influence, then wealthy individuals can have significant influence over legislation once a favored candidate lands in office, simply by making a large campaign contribution.

1. Does a Wealth Bias Exist in Politics?

Some scholars argue that corruption is rampant, and that "elected representatives are so indebted to the special-interest donors on whom they depend for their political existence that they are losing their ability to provide their best judgment in representing the citizens who elected them."[85] During the 1996 election cycle, for instance, the RNC used a formal incentive structure for major donors and offered incrementally greater access to elected officials based on contribution size.[86] In *McConnell*, the Court tried to prevent Congressmen from allowing contributors to set their legislative agendas.[87]

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81. Fred Wertheimer & Susan Weiss Manes, *Campaign Finance Reform: A Key to Restoring the Health of Our Democracy*, 94 COLUM. L. REV. 1126, 1127 (1994).

82. *See* McConnell v. FEC, 540 U.S. 93, 175 (2003).

83. *See id.*

84. CITY OF N.Y. BAR, DOLLARS, *supra* note 52, at 89.

85. Wertheimer & Manes, *supra* note 81, at 1126–27.

86. *Id.*

87. *McConnell*, 540 U.S. at 151. These legislators were "pressed by their benefactors to introduce

Often, campaign contributors are subtle in the way they assert their influence. The New York City Bar Association found that large contributors rarely engage in "outright vote buying."[88] Instead of quid pro quo, dollars-for-votes influence, campaign contributions often allow a donor

> an extra opportunity to make one's case, to be heard during negotiations while a bill is in committee, to influence a member of Congress to make one bill rather than another an agenda priority, or to affect the precise wording of a bill or amendment. Without changing votes, campaign contributions can affect what bills become law.[89]

Considering the legislative benefits that campaign contributions can secure, some corporations consider such donations a cost of doing business.[90] This creates an atmosphere where political contributions become another opportunity for businessmen to one-up competitors, which can be easily exploited by politicians who influence legislation or regulatory activities that affect businesses. Some businessmen fear that they will lose their competitive edge to more generous donors and give more money to maintain their position.[91]

Some studies, however, indicate that money does not necessarily purchase increased influence.[92] Professor Michael Bailey of Georgetown University found that political contributions have little to no effect on election outcomes.[93] Studies analyzing the effects of contributions on roll-call voting indicate that campaign contributions do not affect how Congressmen vote on major issues, although they may affect voting on minor issues.[94] Although Bailey cites studies showing the ineffectiveness of campaign contributions in assuring increased influence, he acknowledges the inconsistency between those results and donor actions, asking, "If money has no effect, why is so much contributed?"[95] The perceived effects of money in politics may have created a political climate where wealthy donors would rather hedge their bets with a large

legislation, to amend legislation, to block legislation, and to vote on legislation in a certain way." *Id.*

88. CITY OF N.Y. BAR, DOLLARS, *supra* note 52, at 92–93.

89. *Id.*

90. *See* DAVID ADAMANY & GEORGE E. AGREE, POLITICAL MONEY: A STRATEGY FOR CAMPAIGN FINANCING IN AMERICA 11 (1975).

91. *Id.*

92. Bailey, *supra* note 78, at 5.

93. *See id.*

94. *See id.* at 15–16.

95. *Id.* at 5.

donation than forego an opportunity to influence legislation.

In a country where people are increasingly disillusioned with the government and unsure that their needs are being represented, the Court is right to be concerned with the appearance of corruption in the political process.[96] Before the BCRA, scholars claimed that "[t]he current campaign finance system lies at the heart of the public's disillusionment."[97] Americans are aware of the huge financial burdens placed on political candidates, and many people who cannot donate believe they have no real opportunity to influence the political process.[98]

Statistics show that most donors do not represent the voice of the majority of constituents. Wealthy campaign contributors compose the vast majority of donors, although they are a small minority of the population. During the 1996 election, individual contributions were donated by one-fourth of one percent of the population.[99] These donors are ninety-nine percent white, seventy-six percent male, and forty percent are older than sixty-one years of age.[100] In a year when the median household income was around thirty five thousand dollars, seventy-eight percent of campaign contributors earned more than one hundred thousand dollars per year, and thirty-eight percent earned more than two hundred fifty thousand dollars per year.[101] Additionally, the majority of financial contributions come from businesses. For example, in the 2004 election cycle, businesses donated seventy-four percent of all campaign contributions.[102] Thus, if campaign contributions do, in fact, influence legislators, then the interests being represented are those of a small, rich minority.

2. Campaign Contributions Influence Congressmen's Political Decision-Making

The assertion that wealthy individual and business donors give money to influence legislation is backed by anecdotal evidence from donors themselves. Robert Rozen, a partner at Ernst & Young, candidly stated

96. Wertheimer & Manes, *supra* note 81, at 1130.
97. *Id.*
98. *See id.* at 1130–31.
99. Bailey, *supra* note 78, at 3 (referencing DAVID DONNELLY, JANICE FINE & ELLEN S. MILLER, ARE ELECTIONS FOR SALE? 7 (2001)).
100. *Id.*
101. *Id.*
102. *Id.*

the extent to which campaign donations induce a sense of obligation in politicians:

> You are doing a favor for somebody by making a large soft money donation and they appreciate it. Ordinarily, people feel inclined to reciprocate favors. Do a bigger favor for someone—that is, write a larger check—and they feel even more compelled to reciprocate . . . . [P]eople do have understandings.[103]

Referring to campaign contributions as favors to be repaid ignores the essential difference between politics and private industry, where such behavior is both permitted and encouraged. Public officials are charged with representing their constituents, not building stronger relationships with donors. However, campaign contributions push donors' pet projects into the spotlight. As former Senator Dale Bumpers[104] said, "Every Senator knows I speak the truth when I say bill after bill after bill has been defeated in this body because of campaign money."[105]

Former Senator Paul Douglas[106] discussed the problems that arise under a system where political contributions are funded by large, visible donations from wealthy contributors. The greatest risk, according to Senator Douglas, is that politicians' loyalties will subtly shift from their communities to their campaign contributors.[107] This is possibly the strongest support for the BCRA's strict limits on donations. If politicians are unable to perceive when they are being manipulated, even the most pragmatic representative could be subconsciously supporting legislation that helps big donors. Limiting campaign contributions would get politicians back on track and allow them to focus on the people who voted them into office—not only those who helped finance their campaigns. Thus, the BCRA addresses the major shortcomings in the current system of campaign finance in two ways: First, by implementing spending limits to prevent donors from making large, visible contributions and conditioning elected representatives—knowingly or unknowingly—to prioritize the needs of contributors over those of constituents, and second, by helping restore public confidence in the government by scaling back the appearance of corruption in political

103. McConnell v. FEC, 540 U.S. 93, 147 (2003).

104. Senator Bumpers, a Democrat, represented Arkansas in the United States Senate.

105. 139 CONG. REC. S7180 (daily ed. June 15, 1993) (statement of Sen. Bumpers).

106. Senator Douglas, a Democrat, represented Illinois in the United States Senate.

107. Wertheimer & Manes, *supra* note 81, at 1129 (citing PAUL H. DOUGLAS, ETHICS IN GOVERNMENT 44 (1952)). "Throughout this whole process the official will claim—and may indeed believe—that there is no causal connection between the favors he has received and the decisions which he makes." *Id.*

fundraising, and by showing Congress's commitment to remedying campaign finance abuses.

C. Claim II: The BCRA's Limits on Freedom to Associate are Necessary to Prevent Campaign Spending Abuses

In order to close the soft money loophole, the BCRA prohibited parties from transferring soft money from state and local committees to federal committees.[108] In the years before the BCRA, state and local parties often fielded large soft money contributions on behalf of federal candidates and used those funds to campaign for that candidate.[109] Abuses of the system before the BCRA were rampant; Senator Wayne Allard[110] wrote a contributor in 1996 to say that the contributor had reached "the limit of what you can directly donate to my campaign, but you can further help my campaign by assisting the Colorado Republican Party."[111] Former Senator Warren Rudman[112] said that, unless state and local parties were prevented from using soft money donations to campaign for federal officials, the system of beholdenness to large soft money contributors will remain.[113]

The BCRA's Levin Amendment[114] provided a limited exception to the Act's soft money ban by allowing state and local parties limited use of soft money contributions to fund generic party advertising and voting activities.[115] These activities included voter registration and get-out-the-vote campaigns, which had to be funded through a combination of Levin funds and hard money.[116] Because of the emphasis on generic party activities, Levin funds could not be used for any campaign activities referring to a clearly identified candidate for federal office, and they could only be used to fund broadcast communications if the ads

108. 2 U.S.C. § 441i(a)(1) (Supp. V 2007).

109. McConnell v. FEC, 504 U.S. 93, 164–65 (2003).

110. Senator Allard, a Republican, was elected to the United States Senate in 1996. Before his term in the Senate, Senator Allard served Colorado in the House of Representatives.

111. FEC v. Colo. Republican Fed. Campaign Comm., 533 U.S. 431, 458 (2001). This letter was an attempt to subvert the limits on how much a single donor could contribute to a single candidate by funneling money to the candidate's state political party. *See id.* The money donated to the state would later be used to help Allard's campaign. *Cf. id.*

112. Former Senator Rudman, a Republican, was elected in New Hampshire to the United States Senate.

113. *McConnell*, 504 U.S. at 164 n.59.

114. 2 U.S.C. § 441(i).

115. *McConnell*, 540 U.S. at 353 (Rehnquist, C.J., dissenting).

116. *See id.*

referred to a candidate for state or local office.[117] Corporations and unions were permitted to donate Levin funds to political parties; however, donations were capped at ten thousand dollars per source.[118]

Election activities paid for with these donations had to be funded partly with Levin monies, and parties had to use hard money to make up the difference in budget.[119]

In addition to the cap of ten thousand dollars per contributor, Levin funds were subject to a number of restrictions that fueled the plaintiffs' challenge in *McConnell*. Federal officeholders; national party committees; and officers, employees, and agents of national party committees could not raise Levin funds.[120] State parties could not raise Levin funds for other state parties—either directly or through joint fundraising—and state parties could not transfer Levin funds to other state parties.[121] Lastly, national parties could not transfer hard money to state and local parties to make up for deficiencies in Levin funds.[122]

The Court's justification for upholding the Levin Amendment was that it prevented big donors from giving multiple ten thousand dollar donations to a number of state and local committees, which could later be transferred to their committee of choice.[123] Without the Levin Amendment's restrictions, the Court feared that "[d]onors could make large, visible contributions at fundraisers, which would provide ready means for corrupting federal officeholders."[124] The amendment, however, drew criticism on the grounds that it infringed on parties' freedom to associate because it prevented them from sharing funds with other state party offices.[125] But by upholding the Levin Amendment restrictions, the *McConnell* Court seemed to ignore the underlying reasons for allowing state and local parties to raise Levin funds at all.

Since the BCRA almost completely curtailed political parties' ability to raise and spend soft money, allowing Levin funds at all was a noteworthy concession. However, the restrictions on transferring Levin funds between party committees and federal, state, or local parties reach

117. 2 U.S.C. § 441i(b)(2)(B)(i)–(ii).
118. *See id.*
119. Robert Bauer, McConnell, *Parties, and the Decline of the Right of Association*, 3 ELEC. L.J. 199, 202 (2004).
120. *See* 2 U.S.C. § 441i(b)(2)(B)(iv).
121. *Id.* § 441i(b)(2)(C).
122. *Id.*
123. McConnell v. FEC, 540 U.S. 93, 171–72 (2003).
124. *Id.* at 172. In this sense, corrupting means buying access to federal officeholders.
125. *See id.*

further than necessary to prevent abuse. Because the amendment included strict rules about what Levin monies can fund, local and state parties were simply prohibited from saturating the airwaves with issue advertisements that directly addressed specific federal candidates, like those circulated after *Buckley*.[126] In practice, however, the BCRA's limits on raising and transferring Levin funds essentially cut against parties' ability to fund their most important activities: get-out-the-vote campaigns and voter registration drives.

Generic voter activity is essential to a political party's sustainability and, unlike issue advertisements, the aim of these activities is not to discredit the opposing party. Because parties had come to rely on soft money for these activities, the restrictions in the Levin Amendment struck a severe blow.[127] However, the Court justified its decision by finding that the Levin Amendment restricted financial contributions instead of political activities and that those restrictions were a modest infringement on associational rights.[128]

By upholding the restrictions on fundraising and transferring money between state and federal parties, the Court's holding in *McConnell* also signaled a change in the permissible limits on the freedom to associate.[129] Before *Buckley*, the Court held that the freedom of association was an "inseparable aspect of the 'liberty' assured by the Due Process Clause" and that the strictest level of scrutiny applied when association was limited.[130] In *McConnell*, however, the Court held that minor restrictions on parties' freedom to associate were permissible.[131] This is a significant shift from counting associational rights among the fundamental liberties guaranteed under the Fourteenth Amendment.[132]

The Court's answer to the plaintiffs' concerns about the associational burdens imposed by the Levin Amendment is based on little more than prejudicial predictions about electioneering activities.[133] The Court held that the "evidence regarding the impact of [the] BCRA on [parties']

126. *See id.* at 202.

127. *See id.* at 200 ("So however much the rise of soft money might be lamented, there could be no question that this form of financing had become important to parties, and not only for the financing of the infamous issue ads. Other core party-type activities—such as voter registration and get-out-the-vote activities—were significantly limited."). For parties who were "operating within the confines of the law as then interpreted and enforced," a major source of funding dried up overnight. *Id.*

128. *McConnell*, 540 U.S. at 172.

129. *See id.* at 199.

130. NAACP v. Ala. *ex rel* Patterson, 357 U.S. 449, 460 (1958) (citations omitted).

131. McConnell v. FEC, 540 U.S. 93, 171 (2003).

132. *See NAACP*, 357 U.S. at 460.

133. Bauer, *supra* note 119, at 202.

revenues [was] 'speculative and not based on any analysis.'"[134] While that may be true, the Court could have just as easily found that the plaintiffs were speculating correctly and associational barriers would prove difficult to overcome. Instead, it assumed that allowing more association between state and local parties would invite corruption and denied the claim.[135]

The Court noted that state and local parties could avoid Levin Amendment restrictions by paying "for federal election activities entirely with hard money."[136] However, the Court assumed that state and local parties could fundamentally change the way they raise and allocate their funds at a moment's notice. This holding "advanced the notion that an associational burden is not unconstitutional, so long as there is an alternative means, however much more circuitous or costly, to engage in the same activities."[137]

In *McConnell*, the Court upheld the Levin Amendment without fully exploring the associational burdens that the restrictions contained in the amendment would place on state and local parties. The Court assumed that state and local parties would have no problem using "homegrown" hard money for Levin activities, without any chance to supplement their generic campaign activities with funds from other committees or federal party offices.[138]

Nevertheless, when viewed in light of the BCRA's overarching goal of eradicating corruption in campaign finance, the restrictions imposed by the Levin Amendment appear necessary to curb the abuse of soft money transfers between state and national party offices that were used to circumvent contribution limitations. To soften the blow on freedom to associate, the Court left its holding on the Levin Amendment open to "as-applied challenges."[139] Therefore, this holding allowed the Court to curb a major source of campaign corruption while protecting political parties' cherished constitutional rights.

134. *McConnell*, 540 U.S. at 173 (citations omitted).

135. *See* Bauer, *supra* note 119, at 203. "There was no way for the Congress or the Court to know that corruption would pursue this route, but if Congress is given leeway for predictions, little justification for the anti-circumvention measure—little, that is, beyond speculation—is required." *Id.*

136. *McConnell*, 540 U.S. at 171.

137. Bauer, *supra* note 119, at 202.

138. *McConnell*, 540 U.S. at 173.

139. *Id.* at 173.

D. Claim III: All Political Parties Will Be Able to Effectively Advocate with Reduced Campaign Funding

While *McConnell* restricted the flow of soft money to political parties, the Court expressed no concern that the decision would unduly limit parties' ability to disseminate campaign messages. The Court credited political parties as being "extraordinarily flexible in adapting to new restrictions on their fundraising abilities."[140] The Court also found that the pertinent question in evaluating campaign finance reform is not how much money political parties have at their disposal during campaigns. Instead, it said that campaign finance reform becomes problematic if it is so severe that it drives the voice of the recipient below the level of notice.[141]

Since Congress passed the FECA, the Supreme Court has disagreed about the role money should play in campaigns. In his concurring opinion in *Nixon v. Shrink Missouri Government Political Action Committee*,[142] a 2000 case upholding campaign finance limits, Justice Stevens argued that popular candidates would fare as well without large campaign contributions.[143] He said some candidates try to buy with money what great leaders inspire with words alone.[144]

Stevens's view is in direct opposition to the holding in *Buckley*, where the Court found that "virtually every means of communicating ideas in today's mass society requires the expenditure of money."[145] From the Court's many examples of the ways political parties use campaign donations to fund electioneering communications and voter education activities, there is no indication that restricting money will do anything but restrict parties' ability to reach the public.[146]

140. *Id.*

141. *Id.* (quoting Nixon v. Shrink Mo. Gov't PAC, 528 U.S. 377, 397 (2000)).

142. 528 U.S. 377 (2000).

143. *See Shrink Mo.*, 528 U.S. at 398 (Stevens, J., concurring).

144. *Id.* He notes:

> Speech has the power to inspire volunteers to perform a multitude of tasks on a campaign trail, on a battleground, or even on a football field. Money, meanwhile, has the power to pay hired laborers to perform the same tasks. It does not follow, however, the that the First Amendment provides the same measure of protection to the use of money to accomplish such goals as it provides to the use of ideas to achieve the same results.

Id.

145. Buckley v. Valeo, 424 U.S. 1, 19 (1976).

146. *See* McConnell v. FEC, 540 U.S. 93, 162 (2003).

Limiting soft money donations disproportionately impacts minor parties, which are not eligible for the same amount of public funding as major party candidates. Adding barriers to the fundraising abilities of parties like the Green Party or Independent Party further limits their ability to succeed in elections. Spending limits prohibit these parties from concentrating their resources, creating roadblocks to ballot access and recognition as an established political party.[147] For instance, the BCRA restrictions on the transfer of soft money between state and local party committees will prevent minor party candidates from amassing their contributions and spending them in a key state or district. The challenges posed by the BCRA only add to the difficulties minor party candidates face in securing adequate campaign financing.[148]

Eligible minor party candidates may run their campaigns with the help of public funding, a system first administered by the FEC in 1976.[149] After the FEC determines a candidate's eligibility, the Commission decides how much public money that candidate is entitled to receive.[150] As a rule, candidates from minor parties are not eligible to receive the same amount of public campaign funding as the two major parties because they are unable to command the necessary number of popular votes.[151] While the government support initially helps launch some minor party candidates' campaigns, they need significant additional funding in order to be election contenders. The Court has stated in past opinions, however, that allowing them to do so would "not only make it easy to raid the United States Treasury, it would also artificially foster the proliferation of splinter parties."[152]

Theresa Amato, Ralph Nader's campaign manager in the 2000 presidential election, described the challenges of running a minor party campaign, noting that Nader was dismissed by major news outlets and

147. D. Bruce La Pierre, *The Bipartisan Campaign Reform Act, Political Parties, and the First Amendment: Lessons From Missouri*, 80 WASH. U. L.Q. 1101, 1117–18 (2002).

148. *See* Richard Briffault, *Reforming Campaign Finance Reform: A Review of Voting with Dollars*, 91 CAL. L. REV. 643, 670–71 (2003); *see also Buckley*, 424 U.S. at 98.

149. Federal Election Commission, Public Funding of Presidential Campaigns, http://www.fec.gov/pages/brochures/pubfund.shtml (last visited Oct. 10, 2008).

150. *Id.* For primary elections, candidates are entitled to receive matching funds from the government, for up to two hundred and fifty dollars of an individual's total contributions to an eligible candidate. *Id.* Funds are also available for candidates to pay off campaign debts, even if the candidate is no longer actively campaigning. *Id.* In general elections, "[a]lthough minor and new party candidates may supplement public funds with private contributions and may exempt some fundraising costs from their expenditure limit, they are otherwise subject to the same spending limit and other requirements that apply to major party candidates." *Id.*

151. *See* Buckley v. Valeo, 424 U.S. 1, 98 (1976).

152. Buckley v. Valeo, 519 F.2d 821, 881 (D.C. Cir. 1975).

unable to afford expensive television advertisements in prime time slots.[153] Nader, an extremely popular minor party candidate, was able to creatively use the Internet to drum up support and organize so-called superallies.[154] However, his success in reaching voters is the exception rather than the rule for minor party candidates.[155]

While it is clear that soft money limitations fall hardest on minor party candidates, one of the BCRA's aims is to prevent the disproportionate impact on these candidates. Congress has no obligation to assist minor party candidates at the expense of campaign finance reform, and while it remains to be seen whether the BCRA will discourage minor party candidates from running for office, the overall positive effects of the BCRA easily outweigh the concerns about driving minor party candidates' voices below the level of notice.[156]

E. Claim IV: The Individuals and Interests Groups Who Fund Electioneering Communications Must Be Identified, Lest They Misrepresent Their True Interests to the Voting Public

In *McConnell*, the Court stressed that the people and interest groups behind electioneering communications must be identified in order for the public to make informed election decisions. The Court was critical of groups that "hid[] behind . . . misleading names like 'The Coalition-Americans Working for Real Change' (funded by business organizations opposed to organized labor) . . . [and] 'Republicans for Clean Air' (funded by brothers Charles and Sam Wyly)."[157] Because these groups are free to run as many advertisements as they can afford during election cycles, there is a risk that a small rich minority can have undue influence on the voting public. In *McConnell*, the Court held that allowing individuals and interest groups to mask their true identities impedes individual citizens' ability to make informed decisions about politics.[158] The Court also upheld the provision of the BCRA that required certain communications authorized by a candidate or his political committee to clearly identify the candidate or committee.[159] If the communication

153. Theresa Amato, *Participating in Power: A View From the Nader Campaign*, 13 STAN. L. & POL'Y REV. 143, 144 (2002).

154. *Id.*

155. *See id.*

156. McConnell v. FEC, 540 U.S. 93, 99 (2003) (quoting Nixon v. Shrink Mo. Gov't PAC, 528 U.S. 377, 397 (2000)).

157. *Id.* at 197.

158. *Id.*

159. *Id.* at 230–31.

was unauthorized, the payor had to be identified and the lack of authorization disclosed.[160] The Court justified its decision by stating that the government had an important interest in informing the public about the problems inherent in the campaign finance system.[161]

There is some tension, however, between the *McConnell* decision and prior holdings on anonymous speech. In the case of *McIntyre v. Ohio Elections Commission*,[162] the petitioner challenged a fine imposed by the Ohio Elections Commission after she distributed anonymous leaflets opposing a proposed school tax levy.[163] The Court found that "an author's decision to remain anonymous... is an aspect of [free speech] protected by the First Amendment."[164] While the pamphlet discussed in *McIntyre* reached fewer people than the televised advertisements described in *McConnell*, both cases dealt with political speech—the category that the First Amendment affords the fullest protection.

The Court has held that anonymous communication has historically given a voice to groups who would otherwise be silenced.[165] In *Talley v. California*,[166] the Court noted the importance of anonymous publication to persecuted groups throughout history who would not otherwise feel comfortable speaking out against oppression.[167] The Court has also found that requiring authors of pamphlets to identify themselves is unconstitutional because fear of retaliation might have a chilling effect on public discussion of important issues.[168]

The political benefits of permitting anonymous discourse are evident in a number of areas, most notably printed communications. Leaked documents, such as the Pentagon Papers, and anonymous tips called in to reporters have forced some politicians to take responsibility for their actions while in office.[169] To find that televised advertisements must honestly reflect their financial backers, the Court must have determined there was a fundamental difference between the communications restricted in the BCRA and the other areas where anonymous communications are permitted.

160. 2 U.S.C. § 441d (2006).
161. Buckley v. Valeo, 424 U.S. 1, 81 (1976).
162. 514 U.S. 334 (1995).
163. *Id.* at 334.
164. *Id.* at 342.
165. *See* Talley v. California, 362 U.S. 60, 64 (1960).
166. 362 U.S. 60 (1960).
167. *Id.*; *see* NAACP v. Ala. *ex rel.* Patterson, 357 U.S. 449, 460 (1958).
168. *Talley*, 362 U.S. at 65.
169. *Cf.* N.Y. Times Co. v. United States, 403 U.S. 713, 715 (1971) (Black, J., concurring).

The Court has noted that, in the realm of political speech, a speaker's identity can mean as much as his message.[170] For instance, The Federalist Papers, perhaps the most influential political documents written in the United States, were published anonymously.[171] There is, however, an important difference between distributing an anonymous pamphlet and running a national television advertisement whose backers cloak their identities with misleading names, for instance, the pharmaceutical industry-funded group that ran advertisements under the name "Citizens for a Better Medicare."[172] Since many voters look to ideological allies when deciding which candidates to support, an advertisement that appears to be financed by citizens interested in improving Medicare could easily mislead a voter who considers Medicare a top priority.[173] The BCRA's disclosure requirements help protect citizens from forming alliances with groups that do not necessarily share their interests.[174]

The First Amendment implications of *McConnell* are clear: The provisions of the BCRA that require special interest groups to disclose which advertisements they fund goes against the precedent that anonymous speech receives constitutional protection.[175] The Court, however, prioritizes citizens' rights to make informed voting decisions over special interest groups' freedom of speech. By requiring disclosure only from individuals and interest groups who fund issue advertisements, the BCRA provides voters with a great deal of information while limiting the First Amendment implications of its decisions to a relatively small class of campaign contributors.

IV. CONCLUSION

The research presented in this Article proves that the Court in *McConnell* took an important step toward eliminating actual and apparent corruption in federal campaigns.[176] The Court's decision was

170. *See* City of Ladue v. Gilleo, 512 U.S. 43, 56 (1994) (finding a speaker's identity "is an important component of many attempts to persuade").

171. The Federalist Papers argued for the ratification of the United States Constitution and comprised a series of articles written by Alexander Hamilton, James Madison, and John Jay. They were published under the pseudonym "Publius," after Roman consul Publius Valerius Publicola. THE FEDERALIST (Alexander Hamilton, John Jay & James Madison).

172. *See* McConnell v. FEC, 540 U.S. 93, 197 (2003).

173. *See id.*

174. *See id.*

175. *See* Minersville Sch. Dist. v. Gobitis, 310 U.S. 586, 605 (1940) (Stone, J., dissenting).

176. *McConnell*, 540 U.S. at 143.

far from airtight, however; it relied on a vague definition of corruption tailored to fit its analysis of different sections of the BCRA. Nevertheless, having unpacked and weighed the merit of the four underlying claims in *McConnell*, it appears that money does indeed have a corrupting influence on politics and that the pre-BCRA political fundraising system was in great need of reform. Close analysis of the campaign finance system suggests that politicians and donors alike were badly in need of the type of bright line rules established in *McConnell*, and the Court's decision to uphold the Act was largely necessary to curb campaign finance abuses.

A. Money Has a Corrupting Influence on Politics

Before the BCRA, wealthy donors would make large soft money contributions to campaigns in hopes of gaining access to party officials. While there is no conclusive evidence that such contributions allowed donors to influence legislation, the pre-BCRA system of campaign finance nevertheless gave rise to serious concerns about both actual and perceived corruption in politics. Thus, the Court was right to uphold the BCRA's restrictive campaign finance regulations in an effort to eliminate actual and apparent campaign finance corruption.

B. Limiting the Amount Wealthy Donors Can Give to Candidates Will Help Curb Corruption, or the Appearance of Corruption, in Politics

While some studies indicate that large donations may not influence legislation, there is conclusive evidence that such donations create a sense of beholdenness in elected officials.[177] Thus, the BCRA's restrictions on soft money donations should curb wealthy contributors' influence over politicians.

While the Act may not entirely eliminate the corruptive effects of campaign contributions, it will certainly help eliminate the appearance of corruption in politics, thus fulfilling one of the Court's aims in *McConnell*.

The research presented in this Article also indicates that the soft money limitations imposed by the BCRA will adversely affect pure ideological donors. These donors wish to represent the strength of their support to candidates through their contributions, but do not seek special

177. *See* Bailey, *supra* note 78, at 16–17; *see also McConnell*, 540 U.S. at 175; Overton, *supra* note 78, at 85–86.

access to elected officials. The BCRA's impact on ideological donors is unfortunate, but it is a necessary side effect of Congress's effort to create a more equitable system of campaign finance.

C. The Restrictions on Freedom to Associate Imposed by the BCRA are Necessary to Prevent Campaign Spending Abuses; However, These Restrictions May Affect Parties' Abilities to Conduct Generic Campaign Activities

The BCRA's restrictions on soft money contributions may affect local and state party committees' abilities to conduct generic campaign activities, including get-out-the-vote campaigns and voter registration drives. Evidence presented in this Article, however, shows that these limits are necessary in order to eliminate campaign finance abuses and prevent contributors from buying access to elected officials. While the Court focused its analysis on the BCRA's potential to eliminate corruption, it remains to be seen if the BCRA's soft money limitations will negatively impact constituents who previously benefited from voter registration drives or get-out-the-vote campaigns.

D. The BCRA's Campaign Finance Restrictions May Impose Disproportionate Burdens on Minor Party Candidates

While candidates from the two major parties will have little trouble continuing to run successful campaigns under the BCRA, minor parties may face greater challenges in reaching the public. When Congress limited soft money donations in the BCRA, it restricted a campaign fundraising practice that parties had previously relied upon to raise a significant portion of their campaign funds. Since minor parties already face great difficulties in disseminating their political platforms, the BCRA's fundraising restrictions may prove too burdensome to bear. While the Court has stated that it does not want to artificially support multiple splinter parties, it does not necessarily follow that these parties should have to surmount major obstacles in order to disseminate their views to the voting public.

E. Those Who Purchase Election Advertisements Must Be Truthfully Identified, So Voters Are Not Misled by the Advertisements' Messages

Finally, the Article discusses the tension between prior cases upholding the right to engage in anonymous political speech and the *McConnell* decision, which requires purchasers of campaign

advertisements to reveal their identities. The Court found that, unlike other forms of political speech, electioneering communications were often used to trick voters, instead of informing them of issues. The research presented here indicates that the BCRA's limits are necessary to help voters make informed decisions.

In sum, this Article sheds light on a campaign finance system in which money spoke too loudly—a system badly in need of bright line rules to help politicians and donors alike distinguish right from wrong. The BCRA and *McConnell* show an important commitment to creating a system of campaign finance where the voices of the many are not drowned out by those of the wealthy few.