1411 K St. NW, Suite 1400
Washington, DC 20005

THE CAMPAIGN LEGAL CENTER

Tel: 202.736.2200
Fax: 202.736.2222

The Critical Role of the Supreme Court:
Upcoming Cases on Democracy

The Supreme Court has, at times, played a key role in protecting and expanding American democracy. But in the past two decades, we have seen the court chip away at campaign finance and voting rights protections that are meant to preserve the right of every citizen to participate in our government.

Right now, our democracy is at a crossroads, and much of what's at stake will be determined by the U.S. Supreme Court. We need a justice who understands that every eligible voter should be able to participate freely and have equal say in our democracy, not just the wealthy and privileged few.

Below are cases impacting our democracy that could appear before the U.S. Supreme Court in the next year.

Veasey v. Abbott:

In 2011, the Texas legislature enacted SB 14, the nation's strictest photo ID law. Under SB 14's requirements, more than half a million registered Texas voters would not have the required IDs to vote. SB 14 limited the forms of acceptable IDs in a manner that foreseeably disproportionately impacted minority African-American and Latino voters. For example, SB 14 excluded state student and employment IDs, which are disproportionately held by minority citizens from the list, but included concealed weapon permits, which are disproportionately held by Anglo citizens. SB 14 had a particularly stark impact on access to voting rights because of the significant travel that can be required to obtain a government issued ID in the state. Nearly a fourth of Texas counties do not have a driver's license office.

This law was first blocked by a three-judge federal district court that found – under Section 5 of the Voting Rights Act – that the law would have an impermissible harmful effect on minority voters. After the Supreme Court struck down Section 5, the Texas Attorney General immediately announced his intention to enforce the law. After years of further litigation, both the federal district court judge in Corpus Christi and the 5th U.S. Circuit Court of Appeals have found that the law results in racial discrimination and violates Section 2 of the Voting Rights Act. To try to reinstate the law, Texas legislators recently asked the Supreme Court to review the 5th Circuit's ruling. While the Supreme Court declined to hear *Veasey v. Abbott* in January, Chief Justice Roberts wrote separately to indicate a willingness to hear the case after

further review by the lower courts on the remaining claims. If the Court takes the case, its decision could inform both the constitutional and Voting Rights Act limits on a state's ability to burden access to the polls, particularly for minority voters.

Whitford v. Gill:

CLC is litigating a case, *Whitford v. Gill*, which has the potential to end excessive partisan gerrymandering once and for all. In the case, CLC is representing 12 Wisconsin voters who have challenged the state's Assembly district lines as an unconstitutional partisan gerrymander. The case is the first purely partisan gerrymandering case to go to trial in 30 years. Through this litigation, the plaintiffs seek to establish, for the first time, a manageable standard by which courts nationwide can analyze partisan gerrymandering claims. Without this standard in place, legislators have redistricted as though they have a blank check from the courts to engage in egregious partisan gerrymandering to entrench their own party and insulate themselves from accountability to their voters.

CLC recently won the case at the district court level, before a three-judge panel in Wisconsin federal court. The panel found that the Wisconsin state Assembly plan was an unconstitutional partisan gerrymander. The state of Wisconsin appealed to the U.S. Supreme Court, setting up a likely hearing for the case during the 2017 term.

Bethune-Hill v. Virginia State Board of Elections:[1]

The Virginia General Assembly (GA) redrew the legislative districts for the Virginia House of Delegates and the Senate of Virginia after the 2010 census. The GA drew 12 house districts using an express racial quota, which was prioritized over all other districting criteria. The GA insisted on meeting this racial quota even where it was entirely unnecessary in order to enable minority voters to elect their candidates of choice. The result was the packing of black voters into a limited number of districts to dilute their voting power elsewhere in the state. Virginia citizens and voters residing in the packed districts challenged the districts as unlawful racial gerrymanders that improperly sorted voters by race. Despite the clear reliance on quotas, the three-judge district court upheld the districts because the lines could, post hoc, be explained by other factors. The voters appealed.

In *Bethune-Hill v. Virginia State Board of Elections*, CLC submitted a friend-of-the-court brief in support of the Virginia citizens who challenged the state's racial gerrymander. On Dec. 5, 2016, the Supreme Court heard oral arguments in this case. The Court's ruling in the case will be one in a series of cases about racial gerrymanders. It is important the Court reverse the district court's erroneous ruling and continue to send

[1] Oral argument has already been held in this case. A new justice will only participate in this case if there is a decision by the Supreme Court to re-hear oral arguments.

a clear message that this type of unnecessary and egregious racial sorting—the purpose of which is to dilute not strengthen minority voting power—is not what the Voting Rights Act envisions or the Constitution tolerates. The Court could do so by striking down the districts directly or sending the case back to the district court for further consideration.

Harris v. McCrory:[2]

After the 2010 census, the North Carolina Assembly redrew its congressional map intentionally adding thousands of black voters into the first two congressional districts to raise their black populations above 50 percent, even though those districts already elected the candidates of choice of the minority community. Like *Bethune Hill* in Virginia, by increasing the concentration of black voters in those districts, North Carolina sought to diminish the impact of black voters in other parts of the state. North Carolina voters challenged the congressional map in *Harris v. McCrory*, arguing that the racial quotas were impermissible. The three-judge federal district court correctly struck down the districts because the rigid racial quotas were the "predominant factor" in drawing the districts and they were used to unnecessarily pack black voters into those districts. North Carolina appealed.

CLC submitted a friend-of-the-court brief in support of the voters that challenged the state's racial gerrymander. A decision from the Court, like *Bethune Hill*, is expected this term.

Independence Institute v. FEC:[3]

In *Independence Institute v. FEC*, the court reviewed a case requesting that certain kinds of pre-election candidate-related advertising be exempted from the federal "electioneering communications" disclosure law. Under current law, if a T.V. or radio ad mentions a candidate and is run shortly before an election in that candidate's district, the group funding the ad is supposed to disclose its identity and donors. The challenger, a Colorado-based think tank, sought to limit disclosure to only ads that explicitly call for the candidate's election or defeat with "express advocacy" like 'vote for' or 'vote against.' But the Supreme Court upheld the "electioneering communications" disclosure requirements in both *McConnell v. FEC* (2003) and *Citizens United v. FEC* (2010)—regardless whether the covered communications constitute express advocacy. Fortunately, in Feb. 2017, the Court ruled against Independence Institute: the exemption from the disclosure laws it sought would have opened up an enormous loophole – and would have deprived voters of vital information about those trying to influence their votes by financing these ads, preventing them from making informed decisions at the polls.

---

[2] Oral argument has already been held in this case. A new justice will only participate in this case if there is a decision by the Supreme Court to re-hear oral arguments.

[3] The Supreme Court summarily affirmed the lower court ruling in this case on February 27, 2017. It's imperative whoever sits on the U.S. Supreme Court understands the importance of disclosure laws to our democracy. We expect this issue to come before the court again.

Republican Party of Louisiana v. FEC:

In *Republican Party of Louisiana v. FEC*, the court will review a challenge to "soft money" restrictions on contributions to state parties passed as part of the Bipartisan Campaign Reform Act. Because the case is on direct appeal to the Supreme Court, the court must issue a decision and cannot decline to consider the case.

Soft money is a contribution to a political party that isn't subject to federal contribution limits and source restrictions. The Republican Party of Louisiana is challenging the soft money limits on grounds that the First Amendment prevents Congress from limiting the sources and amounts of any contribution used by the party committees for nominally "independent" activities. In friend-of-the-court briefs, CLC has countered that the challenged provisions are necessary to prevent corrupt exchanges between candidates and party donors. The Supreme Court has the opportunity in this case to reinforce strong limits on money flowing into parties – and as the three-judge district court did when it upheld the soft money limits on Nov. 7, 2016. Without these limits, the parties become a vehicle through which big donors seek to buy influence over their elected officials and to route more money to their preferred candidates in circumvention of the base limits on contributions to candidates.

Texas Democratic Party v. King Street Patriots:

The Houston, Texas-based Tea Party advocacy group called the King Street Patriots (KSP) is challenging the constitutionality of numerous provisions of Texas campaign finance law, including the corporate contribution ban and PAC disclosure requirements. The Texas Democratic Party brought the suit, arguing that KSP engaged in political activity in the 2010 midterm elections and failed to disclose its donors on grounds that the group trained and dispatched poll watchers on behalf of the Texas Republican Party. In response to being sued, the group challenged numerous provisions of Texas campaign finance law in *Texas Democratic Party v. King Street Patriots*, which has been working its way through Texas courts since 2014. The case is now before the state Supreme Court.

The outcome of this case could reshape campaign finance laws in Texas and if taken up by the Supreme Court, could serve as a bellwether for the constitutionality of corporate contribution restrictions nationwide. The attorney defending KSP indicated the group will seek review from the Supreme Court if they lose in state court. CLC filed a brief urging the Texas Supreme Court to affirm the decision made by the Third District Court of Appeals – which ruled strongly in favor of the constitutionality of the state's campaign finance laws.