

## THE WORK AHEAD IN 2020

### 1. Protecting the Right to Vote and Redistricting— During a Pandemic

**The Threat:** CLC has long been preparing for an upsurge in emergency litigation to protect the right to vote in 2020. The coronavirus pandemic has created new right-to-vote emergencies and raised the stakes as states scramble to provide safe voting opportunities appropriate for the unprecedented public health crisis we are living in.

**The Solution:** CLC has an aggressive plan to challenge vote-by-mail restrictions, ensure vote-by-mail protections and attack other voter-suppressive barriers that arise in the run-up to the 2020 election. CLC's Voting Rights team has hired additional attorneys to ensure that we can meet the needs of this moment. We plan to launch a set of strategic lawsuits to challenge problematic vote-by-mail laws across the country, and are closely monitoring states with a history of voter-hostile policies, in preparation for bringing suit against such policies if necessary.

The coronavirus pandemic has all but guaranteed that the number of people who will vote by mail will increase dramatically. But many states' vote-by-mail policies and procedures are not built to be voting systems of first resort. While a handful of states have moved toward a default vote-by-mail system, most Americans ordinarily still vote in person and nearly a third of states still require an excuse for a voter to obtain a mail-in ballot.

CLC is launching litigation that will protect Americans' right to cast a ballot during a pandemic and their right to have that ballot counted. On the right to cast a ballot, CLC is working closely with partners to investigate and challenge strict excuse requirements for voting by mail that would bar many Americans from casting a ballot safely at home, as well as onerous witness— or even notarization— requirements that will be particularly difficult to meet during this time.

On the back end, we need to ensure that eligible voters' mail-in ballots are counted. In many jurisdictions it is standard practice for election administrators to confirm the validity of mailed-in ballots by comparing the voter's signature on the ballot envelope with a signature on file from the voter's registration. Because any individual's signature can change over time and when using different writing tools, signature matching is an

inherently flawed system and election administrators often erroneously flag legitimate signatures. Without safeguards providing voters with notice of alleged issues and an opportunity to fix them, these harsh matching policies have the potential to disenfranchise many thousands of eligible voters due solely to penmanship and the judgment of untrained local election officials.

Ballot signature match policies must require that voters be notified of any supposed non-match on their ballots and given sufficient time to fix those problems to ensure their votes are counted.

In addition to protecting the right to cast a ballot in November, CLC is working to ensure that critical activities related to redistricting reform are able to safely continue during the pandemic. We have already filed suit in Arkansas on behalf of a partner organization seeking to establish an independent redistricting commission. That case challenges Arkansas's signature gathering requirements for ballot initiatives, which have become unduly burdensome in light of social distancing practices required by COVID-19. On May 5, CLC filed a similar complaint in North Dakota on behalf of a group working on the ground to place a constitutional amendment related to an independent redistricting commission, ranked choice voting, and ethics reform on the November ballot.

## 2. Ensuring a Safe and Secure Election


**The Threat:** The current pandemic poses enormous risks for the administration of the 2020 general election. In addition to our emergency litigation strategy, CLC is actively working to mitigate risks by providing our governmental and advocacy partners throughout the nation with the legal support they need to implement necessary measures in their jurisdictions.

**The Solution:** CLC is providing legal guidance— including policy development, legislative drafting and litigation consultation— to a broad coalition of lawmakers and organizations focused on ensuring safe and secure elections this fall.

**At the federal level,** we are advising numerous members of Congress on the nationwide need for financial support and policy leadership, and working with national coalitions of civil and voting rights organizations, such as the Voting Rights Task Force organized by the Leadership Conference on Civil and Human Rights and the Lawyers' Committee on Civil Rights Under Law's Election Protection Coalition. Within these coalitions, CLC is coordinating legal and policy responses to the pandemic and shaping the messaging regarding free and fair elections.

CLC specifically focuses on emphasizing the importance of procedures to ensure that mailed ballots are properly counted, as well as ensuring that safe and accessible in-person polling places remain available for voters for whom mail ballots are not a reliable option, such as Native American voters who live on reservations.

In addition, CLC works with the Voter Purge Table to identify and address issues related



to voter purges that have been exacerbated by the COVID-19 pandemic. And as founding and steering committee members of the National Task Force on Election Crises, we helped create and are actively disseminating to state officials, the media and other partners the COVID-19 Election Guide, a tool for policymakers and election officials to prepare for the November general election. Finally, CLC is leveraging its nonpartisan reputation to partner with high-profile individuals and organizations across the political spectrum to advocate for commonsense reforms to improve ballot access in response to COVID-19 on a bipartisan basis.

**At the state level,** CLC is a core member of the All Voting is Local (AVIL) coalition, a collaborative campaign among several national civil rights organizations to identify and address barriers to voting at the state and local level. As part of the AVIL Council, CLC provides legal analysis and support to AVIL staff in the seven states in which they are active: Arizona, Florida, Georgia, Michigan, Ohio, Pennsylvania and Wisconsin.

In response to the COVID-19 pandemic, CLC is working to urge election officials in key states to adopt specific policy recommendations to address voting barriers. We are providing legal and policy advice to advocates on the ground in those states as they prepare responses to late-breaking election crises—such as those surrounding the presidential primaries in Ohio and Wisconsin. CLC is providing legal analysis of existing election laws, recommending suitable policy alternatives, and in some instances, preparing for litigation.

### 3. Preventing and Combating Election Crises

**The Threat:** Even before the coronavirus threat emerged, CLC was working to anticipate and counter potential manipulation or disruption of the 2020 general election. In particular, we have focused the possibility that federal or state officials might try to manipulate or delay the November election, or even cancel it— a concern that has unfortunately grown more salient in recent months.

**The Solution:** CLC is devoting significant resources to preparing legal action to combat such anti-democratic abuses and ensure the 2020 elections are free and fair.

For example, as mentioned above, CLC is a founding member of the National Task Force on Election Crises, a diverse, cross-partisan group of more than 50 experts in election law, election administration, national security, cybersecurity, voting rights, civil rights, technology, media, public health and emergency response. CLC is leading a (currently non-public) effort within that task force to catalog the broad range of potential election manipulation scenarios and devise countermeasures tailored to each scenario. Through this and other litigation preparation, CLC is laying the groundwork to take immediate legal action against federal or state officials who threaten the fairness or legitimacy of the 2020 elections.

CLC is also working in coalition with partner groups to combat misinformation and promote voter education. Foreign governments, wealthy special interests and hyper-partisan politicians have a demonstrated history of running election ads that are

deliberately misleading and intended to disrupt or discourage voting.

CLC is directly taking on the major digital platforms— particularly Facebook— with legal strategies designed to force them to crack down on online misinformation and make sure voters can find out which groups are behind these ads. CLC is litigating in federal court to mandate more stringent enforcement of the laws governing digital advertising and is working with state legislatures and regulatory agencies to strengthen those laws. CLC is also a member of the National Association of Secretaries of State #TrustedInfo2020 consortium, which as the election draws near will provide extensive voter education to combat misinformation campaigns on social media.


#### 4. A Powerful and Unique Legal Approach to Combat Election Manipulation

In addition to the strategies described above, CLC's c4 arm, Campaign Legal Center Action (CLCA), mitigates risks to the election by pursuing high-impact litigation to protect voting rights and ensure the enforcement of campaign finance laws.

CLCA is a 501(c)(4) organization created in 2019 to expand CLC's opportunities for offensive litigation that increases enforcement of laws that protect the democratic process. CLCA can represent some strategic plaintiffs (such as political entities) in litigation that Campaign Legal Center, as a 501(c)(3) organization, cannot. It is therefore a particularly important tool for us during an election year, when the misuse of emergency executive powers, opposition to signature match fixes, and abuse of campaign finance laws can disproportionality disenfranchise voters. CLCA represents a unique approach among 501(c)(4) organizations— one that is grounded in strategic litigation rather than lobbying. CLCA provides the freedom and flexibility to pursue litigation that will have the biggest systemic impact.

Federal law contains an unusual — but extremely useful — provision that allows non-governmental entities to sue in federal court to demand enforcement of campaign finance laws. This provision is a key weapon in the campaign finance reform arsenal because it allows reformers to seek from the courts greater enforcement and binding judgments regarding campaign finance laws, even when the relevant enforcement agencies (the Federal Election Commission and the Department of Justice) are unable or unwilling to do so.

Nevertheless, the courts will deny plaintiffs "standing" to bring suit unless they have suffered a concrete injury from the alleged campaign finance violation. In practice, this means that the plaintiff typically must be an electoral "competitor" of the alleged violator. For example, if a candidate receives an illegal contribution from a foreign government, the candidate's opponent would likely have standing to sue over that contribution — because the illegal infusion of funds provides the lawbreaker with an unfair advantage — but an outside entity like CLC that conducted no electoral activities in the relevant campaign generally would not.



CLCA conducts broader litigation as attorneys representing entities that have standing to sue, such as reform-friendly PACs and 501(c)(4) organizations.

To date, CLCA filed suit on behalf of Giffords against the Federal Election Commission (FEC) for failing to announce any action against the National Rifle Association (NRA) for using shell corporations to coordinate campaign spending with seven federal candidates spanning three election cycles from 2014-2018. The lawsuit was filed two days before President Trump addresses the NRA's annual convention for the third year in a row – the only time in American history a president has done so. The NRA's complicated scheme had the effect of evading campaign contribution limits and shielding millions of dollars of political spending – including up to \$25 million coordinated with Donald Trump's presidential campaign – from public scrutiny.