

CAMPAIGN FINANCE LITIGATION UPDATE

May - December 2017

This condensed litigation update, including the summary case status table below, highlights recent activity in cases on CLC’s campaign finance docket. *For the most current information, please visit our website.*

TABLE: CASE STATUS SUMMARY

Oral argument upcoming	<i>Montanans for Community Development v. Motl</i> (Montana disclosure law)	TBD: Briefing complete as of Sept. 5
	<i>Thompson v. Hebdon</i> (Alaska contribution limits and out-of-state contributor restrictions)	TBD: Briefing complete as of Sept. 11
	<i>CLC v. FEC</i> (Challenge to FEC failure to enforce law against use of LLCs as straw donors)	TBD: Briefing complete as of Dec. 1
Awaiting decision	<i>Public Citizen v. FEC</i> (Challenge to FEC failure to require Crossroads GPS to register and report as political committee)	Sept. 2 (2016): Oral argument heard by U.S. District Court for District of Columbia
	<i>Zimmerman v. City of Austin</i> (City of Austin contribution limits)	Dec. 6: Oral argument heard by 5th Circuit
Recently decided	<i>Repub. Party of Louisiana v. FEC</i> (McCain-Feingold Act limits on party “soft money”)	May 22: U.S. Supreme Court summarily affirms three-judge court decision to uphold limits
	<i>Lair v. Motl</i> (Montana contribution limits)	Oct. 24: 9th Circuit reverses district court and upholds limits Nov. 6: Motion for rehearing en banc filed
	<i>Holmes v. FEC</i> (Federal contribution limits)	Nov. 27: Challenge dismissed by en banc D.C. Circuit
	<i>Elster v. City of Seattle</i> (Seattle “political voucher” program)	Nov. 3: Challenge dismissed by state court Dec. 7: Notice of appeal filed

FEDERAL CAMPAIGN FINANCE CASES

CAMPAIGN LEGAL CENTER v. FEC

No. 1:16-cv-00752-TNM (D.D.C.)

This lawsuit challenges the FEC's dismissals of five complaints filed by CLC and Democracy 21 alleging violations of the federal prohibition on "straw donor" contributions. The administrative complaints alleged that donors used personal LLCs as conduits for their contributions to super PACs—in amounts ranging from \$857,000 to over \$12 million—in an effort to conceal their identities.

On March 29, 2017, the district court rejected the FEC's motion to dismiss on jurisdictional grounds, allowing the case to proceed as to three of the five administrative complaints. Summary judgment briefing on the merits was completed December 1, 2017; oral argument has not been set.

CLC Position/Involvement: CLC is one of the plaintiffs.

CREW v. FEC

No. 1:16-cv-00752-JDB (D.D.C.), No. 17-5049 (D.C. Cir.)

Citizens for Responsibility and Ethics in Washington (CREW) challenges the dismissal of its FEC complaint alleging that the Commission on Hope, Growth and Opportunity, which spent millions on political ads during the 2010 elections, violated federal campaign finance disclosure laws.

The district court ruled for the FEC in February 2017. The court did not decide whether the no-action commissioners' arguments were ultimately correct, but applied a highly deferential standard and held that the reasons offered by the no-action commissioners to justify their votes met that standard. CREW appealed the district court's ruling to the D.C. Circuit, where briefing is now complete. Oral argument was heard on November 15, 2017.

CLC Position/Involvement: CLC, joined by Dēmos, filed an amicus brief in the D.C. Circuit on July 5, 2017.

HOLMES v. FEC

No. 1:14-cv-01243-RMC (D.D.C.), 16-5194 (D.C. Cir.) (en banc)

Plaintiffs challenged the federal per-election contribution limits under the First and Fifth Amendment. Instead of making separate contributions for their preferred candidates' primary and general election campaigns, each plaintiff wanted to combine the \$2,600 per-election limits to contribute \$5,200 to the candidate's general election campaign. The

district court certified the First Amendment challenge to the full, en banc D.C. Circuit, and the en banc court dismissed the challenge on November 27, 2017.

CLC Position/Involvement: CLC filed an amicus brief on September 15, 2016 in support of the FEC.

INDEPENDENCE INSTITUTE v. FEC

No. 1:14-cv-01500 (D.D.C.), on appeal Nos. 14-5249 (D.C. Cir.), 16-743 (U.S.)

On February 27, 2017, the Supreme Court summarily affirmed a three-judge district court decision without any discussion or noted dissents, leaving in place the challenged federal electioneering communications disclosure provisions. The lower court had found that the disclosure requirements could constitutionally extend to Independence Institute's ads irrespective of whether they contained "express advocacy" or its functional equivalent, and notwithstanding the Institute's 501(c)(3) status.

CLC Position/Involvement: CLC filed several amicus briefs in the lower courts, including one with the three-judge court in July 2016.

PUBLIC CITIZEN v. FEC

No. 1:14-cv-00148 (D.D.C.)

Public Citizen filed suit in 2014 challenging the dismissal of an administrative complaint it had filed with the FEC alleging that Crossroads GPS had violated federal campaign finance law by failing to register and report as a political committee during the 2010 elections. Summary judgment briefing was completed in 2016, and a hearing was held August 2, 2016. The case is now awaiting a decision from Judge Leon.

CLC Position/Involvement: Attorneys at CLC and Public Citizen are representing the plaintiffs.

REPUBLICAN PARTY OF LOUISIANA v. FEC

No. 15-1241 (D.D.C.), on appeal No. 16-865 (U.S.)

On May 22, 2017, the Supreme Court rejected a constitutional challenge to the federal "soft money" restrictions on contributions to state parties passed as part of the Bipartisan Campaign Reform Act (BCRA). The summary ruling affirmed a three-judge district court's decision upholding BCRA provisions requiring state and local parties to finance "federal election activity" with hard money.

CLC Position/Involvement: CLC filed an amicus brief with the U.S. Supreme Court in support of the FEC on February 13, 2017, and had also filed with the lower court in 2016.

TENNESSEE REPUBLICAN PARTY v. SEC

Nos. 16-3360, 16-3732 (6th Cir.)

The state Republican parties of New York, Tennessee, and Georgia challenged an important Municipal Securities Rulemaking Board rule designed to prevent pay-to-play practices in the municipal securities market connected with the award of municipal investment advisory business. On July 13, 2017, the Sixth Circuit dismissed the case on standing grounds.

CLC Position/Involvement: CLC had filed an amicus brief on December 23, 2016, urging the Sixth Circuit to reject the challenge.

CHALLENGES TO STATE & LOCAL LAWS

AMERICANS FOR PROSPERITY FOUNDATION v. BECERRA

2:14-cv-9448 (C.D. Cal.), on appeal Nos. 15-55446, 16-55727 (9th Cir.)

Nonprofit Americans for Prosperity Foundation (AFPF) challenges California's authority to require charities to file a non-public report of their large donors (IRS Form 990, Schedule B) with state authorities. AFPF argues that even this nonpublic disclosure requirement unconstitutionally chills its donors from making contributions and thereby burdens the group's First Amendment rights.

The district court ruled for AFPF on its as-applied challenge. The state appealed, and AFPF cross-appealed to preserve its facial challenge. Briefing in the Ninth Circuit is now complete, and oral argument will be scheduled once briefing is completed in a related case (*Thomas More Law Center v. Becerra*, Nos. 16-56855 & 16-56902; briefing to conclude in December 2017).

CLC Position/Involvement: CLC filed an amicus brief with the Ninth Circuit on December 2, 2016, supporting the California Attorney General.

CITIZENS UNITED v. SCHNEIDERMAN

No. 1:14-cv-03703-SHS (S.D.N.Y.), No. 16-3110 (2d Cir.)

Citizens United, the same documentary film and advocacy group that filed suit in *Citizens United v. FEC*, challenges a New York regulation that requires all charitable organizations registered with the state to file a non-public report of their large donors (IRS Form 990, Schedule B) with state authorities.

The district court ruled for the state in August 2016, dismissing all counts. Citizens United appealed to the Second Circuit, where the case is now awaiting decision. Oral argument was held on August 21.

CLC Position/Involvement: CLC filed an amicus brief with the Second Circuit on April 14, 2017 in support of the New York Attorney General.

ELSTER v. CITY OF SEATTLE

No. 17-2-16501-8 (Wash. Superior Ct., King Cnty)

On June 28, 2017, two Seattle property owners filed suit in state court seeking to invalidate the city's Democracy Voucher Program, which was enacted by ballot measure in 2015. Plaintiffs contend that the public funding program violates the First Amendment by compelling property owners to subsidize political speech they dislike.

The state trial court dismissed the challenge on November 3, 2017. The plaintiffs filed a notice of appeal on December 7, 2017.

CLC Position/Involvement: CLC filed an amicus brief in support of the City's motion on September 19, 2017 on behalf of itself and Common Cause.

HOWARD JARVIS TAXPAYERS ASS'N v. BROWN

No. 34-2016-80002512 (Cal. Sup. Ct., Sacramento)

On December 12, 2016, plaintiff Howard Jarvis Taxpayers' Association (HJTA) filed suit challenging California Senate Bill 1107 (2016), which would have enabled state and local lawmakers to adopt public campaign financing programs notwithstanding a 1988 voter-enacted ban on the use of public money in elections. The ban is part of the state's Political Reform Act (PRA), which can be amended by a 2/3 vote of the legislature so long as the amendment "further [the PRA's] purposes."

On August 24, 2017, the state trial court ruled against the state. The court found that the 1988 proposition implicitly amended the PRA's stated purposes, and thus that SB 1107 was an invalid legislative amendment because it did not further the amended Act's "purpose" of prohibiting taxpayer financing of political campaigns. The state plans to file a notice of appeal in January 2018.

CLC Position/Involvement: CLC filed a brief on June 28, 2017, on behalf of amici California Common Cause, the League of Women Voters California, and California Clean Money.

ILLINOIS LIBERTY PAC v. MADIGAN

No. 12-05811 (N.D. Ill.), 12-3305 (7th Cir.), 16-3585 (7th Cir.)

Illinois Liberty PAC (ILP) challenges the constitutionality of IL contribution limits, namely, the \$50,000 limit on contributions from PACs to candidates and the \$5,000 limit on contributions from individuals to candidates.

The district court dismissed most of ILP's claims in 2014, and on September 7, 2016, dismissed the sole outstanding claim regarding the treatment of legislative caucus committees. ILP appealed to the Seventh Circuit, where briefing is now complete. Oral argument was heard on September 27.

CLC Position/Involvement: CLC filed an amicus brief with the Seventh Circuit on May 26, 2017, in defense of the IL law. CLC had previously filed amici briefs with the district court and 7th Circuit in 2012, opposing ILP's request for preliminary injunction, and with the district court in 2013 in support of the state's motion to dismiss.

LAIR v. MOTL

No. 12-12 (D. Mont.), on appeal No. 12-35809 (first appeal), No. 16-35424 (9th Cir.)

Plaintiffs in this long-running case challenge, among other things, Montana's campaign contribution limits on the ground that they are unconstitutionally low. After the district court initially struck down the limits in 2012, the 9th Circuit found that the court used the wrong standard and reversed.

In May 2016, upon reconsideration of the limits under a narrower standard, the district court again struck them down, holding that the limits were insufficiently connected to the state's interest in preventing *quid pro quo* corruption. Montana again appealed, and on October 24, the Ninth Circuit reversed the district court, upholding the state limits. The plaintiffs have filed a motion for en banc rehearing, which is currently pending before the Ninth Circuit.

CLC Position/Involvement: On July 2, 2014, CLC, joined by Common Cause, Justice at Stake and the League of Women Voters, filed an amici brief in support of Montana's contribution limits. CLC again filed an amicus brief with the 9th Circuit defending Montana's limits, on October 5, 2016.

MONTANANS FOR COMMUNITY DEVELOPMENT v. MOTL

No. 14-55-H-DLC (D. Mont.), on appeal No. 16-35997 (9th Cir.)

Plaintiff Montanans for Community Development (MCD) challenges an array of Montana state disclosure requirements. MCD claims, among other things, that various definitions

used in MT's disclosure laws are unconstitutionally vague, overbroad, and not properly tailored, both on their face and as applied to a "grassroots" organization like MCD and its proposed "issue" mailers, most of which identified candidates.

On October 31, 2016, the district court upheld key aspects of the laws. MCD appealed to the Ninth Circuit, where briefing is now complete. Oral argument has not been scheduled.

CLC Position/Involvement: CLC filed an amicus brief in support of the state on July 21, 2017.

TEXAS DEMOCRATIC PARTY v. KING STREET PATRIOTS

No. D-1-GN-11-2363 (D. Ct. Travis Co.), No. 03-12-255-cv (Tex. App.-Austin), No. 15-320 (Tex. S. Ct.)

The Texas Democratic Party filed suit alleging violations of state campaign finance law by the King Street Patriots (KSP), a 501(c)(4) corporation, including illegal in-kind corporate contributions and a failure to comply with state disclosure law. KSP counterclaimed to challenge the constitutionality of the state corporate contribution ban and political committee disclosure laws.

The state trial court rejected KSP's counterclaim in 2012, and in 2014, the intermediate appeals court affirmed. The Texas Supreme Court granted KSP's petition for review and, on June 30, 2017, it also rejected KSP's constitutional claims.

CLC Position/Involvement: CLC filed an amicus brief with the Texas Supreme Court in November 2015 to defend the constitutionality of Texas's campaign finance laws. CLC had previously filed amicus briefs in 2012, in the Texas Court of Appeals, and 2011, in the state district court.

RIO GRANDE FOUNDATION v. CITY OF SANTA FE

No. 17-cv-00768 (D.N.M.)

Plaintiffs filed suit on July 26, 2017 to challenge the constitutionality of Santa Fe's ordinance, subsection 9-2.6, insofar as it requires the reporting of expenditures for advocacy for or against municipal ballot propositions. The City filed its answer on August 24.

CLC Position/Involvement: CLC is monitoring this case.

THOMPSON v. HEBDON

No. 3:15-218 (D. Alaska), on appeal, No. 17-35019 (9th Cir.)

Plaintiffs, several individuals and a political party subdivision, challenge Alaska campaign finance laws, including the annual limits on contributions to candidates from individuals, PACs, out-of-state residents, and political parties (including local party subdivisions).

On November 7, 2016, the district court upheld Alaska's limits following a seven-day trial. The plaintiffs appealed to the Ninth Circuit, where briefing is now complete. Oral argument has not been scheduled.

CLC Position/Involvement: CLC filed an amicus brief with the Ninth Circuit in support of the state on July 26, 2017.

ZIMMERMAN v. CITY OF AUSTIN

No. 1:15-cv-628 (W.D. Tex.), on appeal Nos. 16-51366 & 16-51367 (5th Cir.)

Plaintiff Donald Zimmerman, a former city council member in Austin, Texas, challenges the constitutionality of Austin's contribution limits for city council candidates under the First Amendment.

On July 20, 2016, the district court upheld the contribution limits. Zimmerman appealed to the Fifth Circuit, where briefing is now complete. Oral argument was heard on Dec. 4.

CLC Position/Involvement: CLC, joined by Dēmos, filed an amicus brief with the 5th Circuit on May 8, 2017, arguing that Austin's contribution limits should be upheld.