



COURT CASES OF INTEREST

May 2012

U.S. SUPREME COURT

***American Tradition Partnership, Inc. v. Bullock*, DA 11-0081 (Sup. Ct. Mont.), petition cert. No. 11-1179 (U.S. Sup. Ct.)**

Case Description: In March 2010, plaintiffs filed suit to challenge Montana's corporate expenditure restriction, M.C.A. § 13-35-227, on grounds that it was unconstitutional under *Citizens United v FEC*. On October 18, 2010, the state district court struck down Montana's corporate expenditure restriction, holding that *Citizens United* had rejected all of the governmental interests that Montana had asserted in support of its state restriction.

On December 30, 2011, the state Supreme Court reversed the district court, holding that Montana's restriction was constitutional. The court distinguished *Citizens United*, arguing that Montana had a unique history of state electoral corruption and that the state corporate expenditure restriction was less onerous than the analogous federal restriction at issue in *Citizens United*.

Case Status: On February 17, 2012, the Supreme Court granted plaintiffs' request for a stay of the state Supreme Court decision pending review of their petition for *certiorari*. Plaintiffs filed their petition for *certiorari* on March 26, 2012, and the state filed its response May 18, 2012.

CLC Position/Involvement: The CLC filed an *amici* brief in support of itself and 13 other public interest groups on May 18, 2012, urging the U.S. Supreme Court to deny *certiorari*, or if it grants *certiorari*, to grant plenary review.

FEDERAL LAW LITIGATION

***Bluman v. FEC*, No. 10-1766 (D.D.C.), No. 11-275 (U.S. Sup. Ct.) [CLOSED]**

Case Description: On October 19, 2010, plaintiffs filed suit in the U.S. District Court for the District of Columbia to challenge the federal restriction on contributions and expenditures by foreign nationals in connection to local, state or federal elections, *see* 2 U.S.C. § 441e, as applied to foreigners legally living and working in the U.S. On August 8, 2011, a three-

judge court granted the FEC's motion to dismiss, holding that Congress had a compelling interest in restricting contributions and expenditures made by legal temporary residents.

Case Status: On September 1, 2011, plaintiffs filed their jurisdictional statement requesting Supreme Court review. On January 9, 2012, the Supreme Court summarily affirmed the district court.

CLC Position/Involvement: The CLC tracked this case.

***U.S. v. Danielczyk*, No. 11-cr-00085 (E.D. Va.), No. 11-4667 (4th Cir.)**

Case Description: The case is a criminal matter concerning a number of alleged campaign finance violations, including that the defendants illegally directed corporate contributions to Hillary Clinton's 2008 Presidential campaign. On May 26, 2011, the district court dismissed the count in the indictment concerning illegal corporate contributions on grounds that the Supreme Court's decision in *Citizens United* rendered the federal restriction on corporate contributions unconstitutional. The district court, however, failed to cite *FEC v. Beaumont*, the 2003 Supreme Court ruling that had upheld the federal restriction.

The district court then requested additional briefing on the applicability of *Beaumont* to the proceedings. On June 7, 2011, the court reaffirmed its May 26 decision to strike down the federal restriction on corporate contributions, but limited the ruling to the case before the court.

Case Status: On June 16, 2011, the U.S. appealed to the Fourth Circuit. The appeal is now fully briefed, and oral argument was heard on May 18, 2012.

CLC Position/Involvement: The CLC, along with D21, filed an *amici* brief with the Fourth Circuit in support of the U.S. on October 26, 2011.

***Koerber v. FEC*, No. 2:08-cv-00039 (E.D.N.C.)**

Case Description: In September 2008, the Committee for Truth in Politics challenged the constitutionality of the federal disclosure requirements for "electioneering communications," and the FEC's policy for determining federal "political committee" status. On October 29, 2008, the district court denied plaintiffs' request for preliminary relief. Plaintiffs appealed to the Fourth Circuit Court of Appeals, but then voluntarily dismissed their appeal following the *Citizens United* decision.

Case Status: Plaintiffs filed an amended complaint in the district court on May 21, 2010. On June 3, 2010, the district court stayed the proceedings pending the resolution of a different case, *Real Truth About Obama v. FEC*. To date, the stay has not been lifted.

CLC Position/Involvement: The CLC, with D21, filed *amici* briefs defending the the federal disclosure requirements on October 14, 2008 with the district court, and on April 24, 2009 with the Fourth Circuit.

The Real Truth About Obama, Inc. (RTAO) v. FEC, No. 08-cv-00483 (E.D. Va.), No. 11-1760 (4th Cir.)

Case Description: In July 2008, RTAO filed suit in the U.S. District Court for the Eastern District of Virginia to enjoin four FEC regulations governing when independent groups must register as federal political committees and comply with the applicable federal restrictions and disclosure requirements. The district court denied RTAO's request for preliminary relief. On August 5, 2009, the Fourth Circuit Court of Appeals affirmed the district court's decision, and plaintiff thereafter petitioned the Supreme Court for *certiorari*.

On April 26, 2010, the Supreme Court vacated the judgment of the Fourth Circuit, remanding the case for further consideration in light of *Citizens United* and "the Solicitor General's suggestion of mootness."

Upon remand to the district court, only two FEC rules remained at issue due to intervening litigation: 11 C.F.R. § 100.22(b) (defining "express advocacy") and the FEC's policy for determining a group's "major purpose." Both effectuate only disclosure requirements at this point. On June 16, 2011, the district court granted summary judgment to the FEC, finding that the regulation and policy were constitutional.

Case Status: Plaintiffs filed a notice of appeal on July 15, 2011. The appeal was fully briefed as of November 2011, and oral argument was heard by the Fourth Circuit on March 21, 2012.

CLC Position/Involvement: The CLC, with D21, filed an *amici* brief on October 27, 2011 to defend the FEC rules with the Fourth Circuit following the remand of the case. The CLC previously filed *amici* briefs in this case in the district court and the Fourth Circuit on August 14, 2008, October 28, 2008 and October 17, 2010.

Van Hollen v. FEC, No. 11-cv-00766 (D.D.C.)

Case Description: On April 21, 2011, Representative Chris Van Hollen (D-MD) filed a lawsuit against the FEC in federal district court to challenge its 2007 regulation that narrowed the scope of federal disclosure requirements connected to electioneering communications.¹ Plaintiff challenged the regulation under the Administrative Procedures Act, alleging that it is arbitrary, capricious and contrary to the federal campaign finance statute it purports to implement.

Case Status: On March 30, 2012, the district court granted summary judgment in favor of Van Hollen, and invalidated the FEC rule at issue.

¹ In addition to the lawsuit, Van Hollen also filed a petition at the FEC requesting an expedited rulemaking to revise and amend an existing FEC "independent expenditure" disclosure regulation.

On April 26, 2012, the FEC announced that it would not appeal the district court decision. However, the two non-profit groups that have intervened in the case have appealed the decision to the D.C. Circuit Court of Appeals. The intervenors also moved both the district court and the Court of Appeals to stay the district court decision pending their appeal, but on April 27, 2012, the district court denied the motion for a stay, and on May 14, 2012, the Court of Appeal denied a stay.

CLC Position/Involvement: The CLC and Democracy 21 are part of Van Hollen's *pro bono* legal team, led by Roger Witten of the law firm WilmerHale.

Wagner v. FEC, No. 11-cv-1841 (D.D.C.)

Case Description: On October 19, 2011, plaintiffs filed a complaint with the U.S. District Court for the District of Columbia to challenge the constitutionality of the federal governmental contractor contribution ban, 2 U.S.C. § 441c, as applied to individuals who have personal services contracts with federal agencies.

After abandoning their initial request that the district court certify constitutional questions to the D.C. Circuit Court of Appeals pursuant to 2 U.S.C. § 437h, the plaintiffs filed an amended complaint and motion for preliminary injunction on January 31, 2012.

Case Status: On April 16, 2012, the court denied plaintiff's motion for summary judgment. The plaintiffs and defendants are scheduled to file any motions for summary judgment by July 12, 2012 and August 15, 2012, respectively.

CLC Position/Involvement: The CLC has been tracking this case.

STATE/MUNICIPAL LAW LITIGATION

State Disclosure Cases

Center for Individual Freedom (CIF) v. Madigan, No. 10-cv-04383 (N.D. Ill.), 11-3693 (7th Cir.)

Case Description: On July 12, 2010, CIF initiated an action in the U.S. District Court of the Northern District of Illinois challenging several aspects of Illinois' disclosure law, including the provisions requiring groups to register as political committees and to file regular disclosure reports if they accept contributions or make expenditures over \$3,000 on behalf of or in opposition to candidates.

On August 26, 2010, the district court denied plaintiff's motion for a preliminary injunction, and plaintiffs appealed. On October 15, 2010, the plaintiffs agreed to dismiss the appeal.

Plaintiffs' amended complaint was filed January 18, 2011. On November 3, 2011, the district court granted summary judgment to the state, holding that the challenged disclosure laws were constitutional, and were neither vague nor overbroad.

Case Status: Plaintiffs appealed to the Seventh Circuit Court of Appeals. The appeal was fully briefed as of March 2012, and oral argument was heard on April 10, 2012.

CLC Position/Involvement: The CLC has been tracking this case.

***Center for Individual Freedom (CIF) v. Tennant*, No. 1:08-cv-00190 (S.D.W. Vir.) (lead case), consolidated with *West Virginians for Life (WVFL) v. Ireland*, No. 1:08-cv-01133 (S.D.W. Vir.), on appeal No. 11-1952 (lead case)/ No. 11-1993 (4th Cir.)**

Case Description: In June 2007, CIF challenged multiple provisions of West Virginia's campaign finance law, including the state's electioneering communications disclosure provisions, and requested a preliminary injunction to enjoin enforcement of these provisions. The *WVFL* case was consolidated with the *CIF* case on October 7, 2008.

The district court on October 17, 2008 granted in part the plaintiffs' motions for preliminary relief. On July 18, 2011, the district court granted in part plaintiffs' motion for summary judgment, striking down several provisions of West Virginia's law, including its definitions of "express advocacy" and "electioneering communications," as well as its requirement that groups making electioneering communication disclose all their donors.

Case Status: Both defendants and plaintiffs appealed the district court decision to the Fourth Circuit Court of Appeals. The appeal is now fully briefed but oral argument has not yet been scheduled.

CLC Position/Involvement: The CLC has been tracking this case.

***Doe v. Reed*, No. 09-559 (U.S. Sup. Ct.), on remand No. 3:09-cv-05456 (W.D. Wa.), on appeal No. 11-35854 (9th Cir.)**

Case Description: Plaintiffs filed suit to halt Washington State from making petitions connected to a state ballot measure available in response to requests made under the state Public Records Act. Plaintiffs argued the following: (a) the state records law was facially unconstitutional in connection to ballot measure petitions, and (b) the law was unconstitutional as applied to petitions for Referendum 71, a domestic partnership ballot measure, because supporters of the measure had experienced harassment and therefore were entitled to an exemption from disclosure. On September 10, 2009, the district court issued a preliminary injunction blocking the release of the petitions. On October 22, 2009, the Ninth Circuit found that the state law was constitutional in connection to ballot measure petitions, but did not reach the plaintiffs' as-applied claim relating to Referendum 71.

Plaintiffs petitioned for *certiorari*, and the Supreme Court accepted the case. On June 24, 2010, the Supreme Court upheld the law on its face. The Court, however, remanded the case to the district court to allow the district court to consider plaintiffs' remaining as-applied claim.

On remand, the district court rejected the as-applied challenge and granted summary judgment in favor of the state on October 17, 2011.

Case Status: Plaintiffs appealed the October decision dismissing their as-applied challenge to the Ninth Circuit Court of Appeals. On November 28, 2011, the U.S. Supreme Court denied plaintiffs' request for an injunction pending appeal.

The appeal is fully briefed and oral argument has been scheduled for June 22, 2012.

CLC Position/Involvement: The CLC filed an *amicus* brief on March 28, 2012 with the Ninth Circuit, urging the court to reject the plaintiffs' as-applied challenge and arguing that the narrow exemption to disclosure for harassment set forth in *Buckley v. Valeo* was not warranted in this case.

Family PAC v. Reed, 3:09-cv-05662 (W.D. Wash.), on appeal No. 10-35832, 10-35893 (9th Cir.)

Case Description: In October 2009, Family PAC filed suit to challenge two provisions of Washington's disclosure law applicable to ballot measure advocacy:

- (1) The state restriction prohibiting contributions of greater than \$5,000 to ballot measure advocacy committees during the 21-day period before an election; and
- (2) The state requirement that ballot measure committees disclose the names and addresses of donors giving more than \$25, and disclose employer information of donors giving more than \$100.

On September 1, 2010, the district court upheld the \$25 and \$100 reporting thresholds, but struck down the \$5,000 contribution ban in the 21-day pre-election period. On September 16, 2010, plaintiff appealed.

Case Status: On December 29, 2011, the Ninth Circuit affirmed the district court decision, upholding the ballot measure disclosure provisions but striking down the 21-day contribution ban.

CLC Position/Involvement: The CLC has been tracking this case.

Lair v. Murray, No. 12-cv-00102 (D. Mont.)

Case Description: On September 6, 2011, plaintiffs filed a complaint and a motion for a preliminary injunction, challenging multiple provisions of Montana's campaign finance law, including:

1. Requirements for political election materials that mention another candidate's voting record ("vote reporting requirement");
2. A prohibition on misrepresenting a candidate's public voting record or any other matter relevant to the issues of the campaign ("political civil libel");
3. Limits on contributions from individuals and political committees to candidates;
4. An aggregate contribution limit applicable to contributions from state political parties to candidates; and

5. A prohibition on corporate contributions to a candidate or corporate independent expenditures on behalf of a candidate.

On February 24, 2012, the district court preliminarily enjoined the provisions governing the discussion of candidates' voting records in campaign materials, *i.e.* the voting reporting requirement and the political civil libel provision. The court, however, denied preliminary relief as to all other claims, although it noted that (a) the challenge to the corporate expenditure prohibition was moot because the prohibition had been enjoined in the *American Tradition Partnership* litigation, and (b) the plaintiffs could potentially marshal evidence showing that the contribution limits prevented candidates from "amassing the resources necessary for effective [campaign] advocacy."

Case Status: On May 16, 2012, the district court granted summary judgment in part for plaintiffs, striking down the voting reporting requirement and the political civil libel provision, as well as the restriction on corporate contributions to independent expenditure committees, an issue not reached in the preliminary injunction proceedings. The Court also noted that a bench trial was scheduled for September to resolve the claims relating to the individual and political committee contribution limits and the aggregate party contribution limit claim. On the corporate contribution restriction claim, the district court granted summary judgment to the state.

CLC Position/Involvement: The CLC has been tracking this case.

National Organization for Marriage (NOM) v. Daluz, No. 1:10-cv-00392 (D.R.I.), on appeal No. 10-2304 (1st Cir.)

Case Description: On September 21, 2010, NOM filed suit in the U.S. District Court for the District of Rhode Island to challenge several aspects of Rhode Island campaign finance law, including the following:

1. The state "political committee" definition and attendant political committee regulations;
2. The state restrictions on corporate expenditures; and
3. The state definition of "independent expenditure" and the independent expenditure disclosure requirements.

On October 28, 2010, the district court denied plaintiff's motion for a preliminary injunction. Plaintiff appealed the decision to the First Circuit Court of Appeals.

Case Status: On August 11, 2011, the First Circuit affirmed the lower court's decision to deny the motion for preliminary injunction. On September 6, 2011, the Court of Appeals denied plaintiffs-appellants' motion for an *en banc* rehearing.

On September 16, 2011, the district court stayed the proceedings until 28 days after the resolution of any appeal to the U.S. Supreme Court from a similar case, *NOM v. McKee*. To date, the stay has not been lifted.

CLC Position/Involvement: The CLC has been tracking this case.

***National Organization for Marriage (NOM) v. McKee*, No. 1:09-cv-538 (D. Maine), on appeal No. 10-2000 (campaign finance law), 11-1196 (ballot measure law) (1st Cir.)**

Case Description:

I. Ballot Measure Claims. In October 2009, plaintiffs challenged Maine’s ballot question committee registration statute, which requires any person or entity that receives contributions or makes expenditures over \$5,000 “for the purpose of initiating, promoting, defeating or influencing in any way a ballot question” to register and file disclosure reports with the state commission. The court denied NOM’s request for a temporary restraining order on October 28, 2009.

II. Campaign Finance Claims. In June 2010, NOM filed an amended complaint adding new counts 5-8 to challenge laws governing candidate elections, including Maine’s definition of “political action committee,” its regulation of “independent expenditures” and its political disclaimer requirements. Trial on these new issues was conducted on August 12, 2010.

Case Status:

I. Ballot Measure Claims. On February 12, 2011, the district court rejected plaintiffs’ challenge to Maine’s ballot measure disclosure law, and granted summary judgment to the state. Plaintiffs appealed the decision to the First Circuit Court of Appeals on February 22, 2011.

On January 31, 2012, the Court of Appeals affirmed the lower court decision, upholding all of the challenged provisions. On February 22, 2012, the Court of Appeals denied plaintiffs-appellants’ motion for a rehearing *en banc*. No petition for *certiorari* has been filed to date.

II. Campaign Finance Claims. On August 19, 2010, the district court ruled on counts 5-8, rejecting in large part plaintiffs’ claims, but finding that (a) the phrase “influence in any way” and the term “influence” in Maine’s campaign finance law are unconstitutionally vague, and (b) a regulation requiring disclosure of any independent expenditure over \$250 within 24 hours was unconstitutionally burdensome. Plaintiffs appealed.

On August 8, 2011, the First Circuit Court of Appeals affirmed the district court decision, except it reversed the district court’s finding that the “influence” language was vague, and upheld the language after applying the state’s suggested narrowing construction. On November 2, 2011, NOM filed a petition for *certiorari* with the Supreme Court, which was denied on February 27, 2012 (No. 11-599).

CLC Position/Involvement: The CLC has been tracking this case.

***National Organization for Marriage (NOM) v. Roberts*, No. 1:10-cv-00192 (N.D. Fla.), on appeal *NOM v. Sec. State of Florida*, No. 11-14193-BB (11th Cir.)**

Case Description: On September 22, 2010, plaintiff filed suit to challenge a Florida statute that requires groups that are not registered as political committees to register and report if

they make over \$5,000 of electioneering communications in a calendar year. Plaintiff argued that the state definition of “electioneering communication” is vague because it includes the “appeal to vote” test devised by the Supreme Court in *Wisconsin Right to Life v. FEC*, and that the disclosure requirements are overbroad insofar as they apply to “non-major-purpose” groups.

On November 8, 2010, the court denied plaintiff’s motion for a preliminary injunction. On August 8, 2011, the court upheld the law and entered summary judgment for defendants.

Case Status: On September 2, 2011, plaintiffs filed a notice of appeal to the Eleventh Circuit Court of Appeals. On May 17, 2012, the Court of Appeals affirmed the lower court decision and upheld the disclosure law.

CLC Position/Involvement: The CLC filed an *amicus* brief with the Eleventh Circuit to defend Florida’s disclosure law on December 15, 2011.

***Protectmarriage.com v. Bowen*, 2:09-cv-00058 (E.D. Calif.), on appeal No. 11-17884 (9th Cir.)**

Case Description: In January 2009, Plaintiffs brought a challenge in the U.S. District Court for the Eastern District of California to a California law requiring ballot measure committees to disclose the names and other information of their contributors of \$100 or more. Specifically, plaintiffs sought an as-applied “blanket exemption” from California’s disclosure provisions, claiming that compelled disclosure of their contributors would result in threats, harassment, and reprisals against supporters of Proposition 8, a ballot measure pertaining to same-sex marriage. Additionally, plaintiffs contended that the law’s \$100 threshold for the disclosure of contributors is not narrowly tailored.

The district court denied plaintiffs’ motion for a preliminary injunction on January 30, 2009, and granted summary judgment in favor of the state on October 20, 2011 in a ruling from the bench.

Case Status: Plaintiffs appealed the decision to the Ninth Circuit Court of Appeals on December 2, 2011. The appeal is now fully briefed.

CLC Position/Involvement: The CLC filed an *amicus* brief to support California’s ballot measure disclosure law with the Ninth Circuit on April 17, 2012.

***Republican Party of New Mexico v. King*, No. 1:11-cv-00900 (D. N.Mex.), on appeal No. 12-2015 (10th Cir.)**

Case Description: In October 2011, plaintiffs filed a complaint and motion for preliminary injunction, challenging multiple provisions of New Mexico’s campaign finance law, including:

1. The \$5,000 limit on contributions to political committees, including political parties;

2. The \$5,000 limit on contributions from political committees to other political committees or candidates, including contributions from party committees to other party committees; and
3. The restriction on committees from soliciting or accepting contributions greater than \$5,000.

Case Status: On January 5, 2012, the district court preliminarily enjoined the contribution limit as applied to independent expenditure committees but denied the motion for preliminary injunction as to the remaining claims. The state defendants appealed the decision to the Tenth Circuit Court of Appeals on February 2, 2012, and their opening brief was filed May 14, 2012.

CLC Position/Involvement: The CLC has been tracking this case.

Vermont Right to Life Committee, Inc. (VRTL) v. Sorell, 09-cv-00188 (D.Vt.)

Case Description: In August 2009, VRTL filed a complaint challenging several aspects of Vermont’s campaign finance law, arguing that the law violates the First Amendment by regulating VRTL as a political committee, requiring disclaimers on electioneering communications, and requiring the reporting of “mass-media activities.”

Plaintiffs filed an amended complaint on July 19, 2010, which also challenged the state contribution limits as applied to political committees making only independent expenditures and the \$100 reporting threshold for contributions to a committee.

Case Status: The parties filed cross-motions for summary judgment on October 14, 2011, and the court heard oral argument on the motions on April 24, 2012.

CLC Position/Involvement: The CLC has been tracking this case.

State Contribution Limit Cases

Iowa Right to Life (IRTL) v. Smithson, No. 10-cv-00416 (S.D. Iowa), on appeal No. 12-1605 (8th Cir.)

Case Description: On September 7, 2010, IRTL filed suit to challenge several aspects of Iowa’s campaign finance law, arguing that:

1. The state definition for “political committee” is vague and overbroad;
2. The state independent expenditure disclosure requirements are tantamount to the imposition of political committee status on groups making independent expenditures and are therefore subject to strict scrutiny.
3. The state restriction on corporate contributions is unconstitutional, notwithstanding the Supreme Court’s 2003 decision in *Beaumont v. FEC* upholding the constitutionality of the federal corporate contribution restriction.
4. The state requirement that entities obtain annual approval from their board of directors for independent expenditures is unconstitutional.

On October 20, 2010, the district court denied plaintiff's motion for a preliminary injunction as to all claims.

On June 29, 2011, the district court granted summary judgment in favor of the state on three of the four claims, upholding the state independent expenditure disclosure requirements and the corporate contribution restriction, and finding that the plaintiffs lacked standing to challenge the board approval requirement. The court, however, directed certain aspects of Count One of the complaint (definition of "political committee") to the state Supreme Court for further clarification of the law. On February 7, 2012, the state court returned its decision as to the certified question to the federal district court, and the district court entered summary judgment for the state on this claim.

Case Status: On March 12, 2012, plaintiff filed their notice of appeal. On April 24, 2012, the Eighth Circuit Court of Appeals granted IRTL's motion to hold the appeal in abeyance pending a decision in the ongoing case, *Minnesota Citizens Concerned for Life v. Swanson* (see below).

CLC Position/Involvement: The CLC has been tracking this case.

Minnesota Concerned Citizens for Life (MCCL) v. Swanson, 10-cv-2938 (D. Minn.), on appeal No. 10-3126 (8th Cir.)

Case Description: On July 7, 2010, MCCL challenged multiple provisions of Minnesota's campaign finance law, including:

1. The state requirement that associations disclose their independent spending by creating a "political fund," subject to registration, record-keeping and reporting requirements; and
2. The restriction on corporate contributions to parties and candidates.

On September 20, 2010, the district court denied plaintiffs' motion for a preliminary injunction, and plaintiffs appealed to the Eighth Circuit Court of Appeals.

On May 16, 2011, a three-judge panel of the Eighth Circuit affirmed that MCCL was unlikely to prevail in its challenge to Minnesota's independent expenditures disclosure requirements and the state restriction on corporate contributions.

Case Status: On June 1, 2011, the plaintiffs petitioned the Court of Appeals for an *en banc* rehearing of the May 16 decision, and the Court granted the petition on July 12, 2011. Oral argument was heard on September 21, 2011.

CLC Position/Involvement: On December 22, 2010, the CLC, with D21, filed an *amici* brief with the Eighth Circuit to defend Minnesota's campaign finance law. The CLC and D21 again filed an *amici* brief with the *en banc* Court of Appeals' in July of 2011.

***Ognibene v Parkes*, 08-cv-1335 (S.D.N.Y.), on appeal No. 09-0994 (2d Cir.)**

Case Description: In February 2008, a collection of candidates, lobbyists, LLCs and party entities filed suit to challenge the constitutionality of multiple provisions of New York City’s municipal campaign finance law and public financing program, including:

- (1) New York’s pay-to-play law that subjects persons doing business with the city and lobbyists to lower contribution limits and provides that their contributions are not “matched” with public funds;
- (2) A 2007 expansion of New York’s ban on corporate contributions to also prohibit contributions from partnerships, LLCs and LLPs; and
- (3) The trigger provisions of the public financing program that provide publicly-financed candidates with a greater “match” of public funds and an increase in their voluntary spending limits if they face a high-spending non-participating opponent.

Plaintiffs brought their claims under the First and Fourteenth Amendment and Section 2 of the Voting Rights Act.

On April 24, 2008, plaintiffs moved for a preliminary injunction on their First and Fourteenth Amendment claims against the play-to-play provisions and the expanded corporate contribution prohibition (but did not address the trigger provisions or VRA claims). On February 6, 2009, the district court denied the motion for preliminary relief, and granted summary judgment in favor of the City.

Plaintiffs appealed the decision. On December 21, 2011, the Second Circuit Court of Appeals affirmed the district court’s dismissal of plaintiffs’ claims raised on their motion for preliminary injunction.

Case Status: Plaintiffs filed a petition for *certiorari* (No. 11-1153) on March 19, 2012; the City’s was scheduled to respond on May 21, 2012.

CLC Position/Involvement: The CLC has been tracking this case.

***Texas Democratic Party v. King Street Patriots*, No. D-1-GN-11-002363 (D.Ct. Travis Co.)**

Case Description: The Texas Democratic Party filed an action seeking damages and injunctive relief in connection to several violations of state campaign finance law allegedly committed by the King Street Patriots. The Party alleges that the King Street Patriots, a non-profit 501(c)(4) corporation, made in-kind contributions to the state Republican Party in violation of Texas’s restriction on corporate political contributions, and failed to register as a “political committee” and comply with state disclosure law. In response to the suit, the King Street Patriots filed a counterclaim challenging the constitutionality of numerous provisions of Texas campaign finance law, including the state corporate contribution restriction, and the disclosure and organizational requirements applicable to political committees.

Case Status: On March 27, 2012, the state supreme court rejected the King Street Patriot's counterclaim, and upheld the constitutionality of the challenged Texas campaign finance laws.

CLC Position/Involvement: On September 21, 2011, the CLC filed an *amicus* brief to oppose the counterclaim and to defend the constitutionality of Texas's campaign finance law.

Thalheimer v. City of San Diego, No. 10-55322 (9th Cir.)

Case Description: In December 2009, plaintiffs filed a constitutional challenge to several provisions of San Diego's campaign finance laws. One of the challenged provisions imposes a \$500 contribution limit on a "general purpose recipient committee" even if it only makes independent expenditures. Plaintiffs also challenged the City's prohibition on political contributions by "non-individual entities" (*e.g.*, corporations, labor unions and other groups) to candidates, political parties and other PACs that contribute to candidates. In February 2010, the district court preliminarily enjoined the contribution limit applicable to independent expenditure committees but refused to enjoin the prohibition on contributions by non-individual entities except as applied to political parties.

Plaintiffs appealed, and on June 9, 2011, the Ninth Circuit affirmed the district court's decision.

Case Status: Following the Ninth Circuit decision, the district court on January 20, 2012, granted in part summary judgment in favor of the City, holding that:

1. The prohibition on contributions from "non-individual entities" was constitutional except as applied to contributions from political parties, and
2. The contribution limits were unconstitutional as applied to independent expenditure groups.

CLC Position/Involvement: On April 9, 2010, the CLC filed a brief *amici curie* with the Ninth Circuit on behalf of itself and two other public interest groups to support the contribution limits.

Yamada v. Kuramoto, 10-cv-00497 (D. Haw.), on appeal No. 12-15913 (9th Cir.)

Case Description: On August 27, 2010, plaintiffs filed suit to challenge multiple aspects of Hawaii state campaign finance law, including:

1. The statutory definitions of "political committee," "expenditure" and other terms;
2. The electioneering communications reporting requirements;
3. The disclaimer requirement connected to "advertisements," as defined by state law;
4. The state restriction on contributions from government contractors; and
5. The contribution limits applicable to independent expenditure committees.

On October 7, 2010, the district court granted plaintiffs' motion for preliminary injunction only with respect to the contribution limits as applied to independent expenditure

committees. Defendants appealed this decision to the Ninth Circuit Court of Appeals (No. 10-17280). On June 9, 2011, the state voluntarily dismissed its appeal.

On October 29, 2010, the district court denied plaintiffs' motion for a preliminary injunction on the remaining issues. On March 21, 2011, the district court granted summary judgment to plaintiffs on their claim regarding independent expenditure committee contribution limits, and granted summary judgment to the state on all other claims.

Case Status: On April 19, 2012, plaintiffs appealed the March 21 decision to the Ninth Circuit. Plaintiffs-appellants' opening brief is due July 30, 2012.

CLC Position/Involvement: The CLC has been tracking this case.

Wisconsin Right to Life (WRTL) v. Myse, No. 10-CV-0669 (E.D. Wisc.)

Case Description: On August 5, 2010, plaintiffs filed suit to challenge numerous aspects of Wisconsin state campaign finance law, including the following:

1. The definition of "political committee";
2. The disclosure requirements relating applicable to "independent expenditure organizations";
3. The 24-hour reporting requirement;
4. A requirement that a committee files an oath attesting that its independent disbursements are independent;
5. The \$20 and \$100 reporting thresholds;
6. The \$10,000 cap on the aggregate annual amount individuals may contribute to candidates, political parties and political committees as applied to political committees making only independent expenditures (IECs);
7. The \$10,000 contribution limit as applied to WRTL's contributions to its PAC, WRTL-SPAC; and
8. The attribution and disclaimer requirements.

On September 19, 2010, the court granted defendants' motion to stay the proceedings on abstention grounds pending the resolution of a state court case challenging Wisconsin's campaign finance law, *Wisconsin Prosperity Network, Inc. v. Myse*, 2010AP1937-OA (Wis. Sup. Ct.).² On June 24, 2011, plaintiffs moved to lift the stay as to one claim in their complaint, *i.e.*, their challenge to the contribution limits as applied to IECs. On July 12, 2011, the court denied the motion, and plaintiffs appealed to the Seventh Circuit Court of Appeals. On December 12, 2011, the Court of Appeals heard their claim and struck down the \$10,000 contribution limit as applied to IECs.

² In addition, a second action was also filed in federal district court, *Wisconsin Club for Growth, Inc. v. Myse*, 10-CV-427 (W.D. Wis.), to challenge Wisconsin's campaign finance law. This case was also stayed pending the outcome in *Wisconsin Prosperity Network*. See *Wis. Club for Growth, Inc. v. Myse*, 2010 WL 4024932 (W.D. Wis. Oct. 13, 2010) (order staying all proceedings).

On March 19, 2012, the state Supreme Court dismissed the parallel state case, *Wisconsin Prosperity Network v. Myse*, and on April 18, 2012, the district court granted plaintiffs' motion to lift the stay.³

Case Status: On April 18, 2012, plaintiffs filed an amended complaint and motion for temporary restraining order and preliminary injunction. The amended complaint drops plaintiffs' claims pertaining to the \$20 and \$100 reporting thresholds and adds a claim challenging the constitutionality of Wisconsin's corporate expenditure restriction at Wis. Stat. § 11.38.1.a.1. Oral argument on plaintiffs' TRO/PI motion was heard May 4, 2012.

CLC Position/Involvement: The CLC has been tracking this case.

³ The *Wisconsin Club for Growth* in the Western District remains stayed as of May 1, 2012.