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Campaign Legal Center Litigation Summary
May 2016

1. U.S. SUPREME COURT
   a. Active cases
   b. Past cases/orders
2. CASES CHALLENGING FEDERAL LAWS/REGULATIONS
3. CASES CHALLENGING STATE/MUNICIPAL LAWS/REGULATIONS

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1. U.S. SUPREME COURT

a. Active cases

McDonnell v. United States
No. 3:14-cr-00012-JRS-1 (E.D. Va.), on appeal No. 15-4059 (4th Cir.), petition for certiorari granted, No. 15-474 (U.S.)

Case Description: Former Virginia Governor Robert McDonnell was prosecuted on charges that he had used his office to help a businessman, Jonnie R. Williams Sr., in exchange for lavish gifts, loans and vacations for himself and his family. Following a jury trial in the U.S. District Court for the Eastern District of Virginia, McDonnell was convicted on 11 counts of honest-services fraud, Hobbs Act extortion, and conspiracy, and was sentenced to 24 months of imprisonment. The Fourth Circuit Court of Appeals affirmed his conviction on July 10, 2015, and denied a petition for rehearing on August 11, 2015.

Case Status: McDonnell filed a petition for a writ of certiorari on October 13, 2015. The Supreme Court granted review on January 15, 2016 as to Question 1 of the petition: Whether "official action" under the controlling bribery statute and other statutes is limited to exercising actual governmental power, threatening to exercise such power, or pressuring others to exercise such power, and whether the jury must be so instructed; or, if not so limited, whether the relevant statutes are unconstitutional. Oral argument was heard on April 27, 2016.

CLC Position/Involvement: CLC filed an amicus brief in support of the United States on April 6, 2016.

b. Past cases/orders

Williams-Yulee v. Florida Bar
No. 13-1499 (U.S.)

Case Description: This case involves a challenge by Lanell Williams-Yulee, a state judicial candidate, who was disciplined by the Florida Bar after she sent a mass-mail letter in 2009 soliciting

campaign contributions. She filed suit to challenge the Florida canon of judicial conduct prohibiting candidates in judicial elections from directly soliciting campaign contributions, alleging that the rule unconstitutionally infringed on her free speech rights. The Florida Supreme Court rejected her argument, finding that the solicitation prohibition protects Florida's interest in the actuality and appearance of an impartial judiciary.

Case Status: The Supreme Court upheld the solicitation restriction in a 5-4 decision on April 29, 2015, holding that the law was narrowly tailored to advance the government's compelling interest in "preserving public confidence in the integrity of its judiciary."

CLC Position/Involvement: On December 23, 2014, the CLC joined with the Brennan Center, Justice at Stake, Demos, Lambda Legal Defense and Education Fund, Common Cause, and the Center for Media and Democracy to file an amici brief to defend Florida's judicial canon.

2. CASES CHALLENGING FEDERAL CAMPAIGN FINANCE/ DISCLOSURE LAWS

Campaign Legal Center v. FEC
No. 1:16-cv-00752-JDB (D.D.C.)

Case Description: On April 22, 2016, Campaign Legal Center and Democracy 21 filed suit against the FEC in the U.S. District Court for the District of Columbia challenging the FEC's dismissal of five administrative complaints as arbitrary, capricious and contrary to law. The complaints alleged that several entities and individuals violated 52 U.S.C. § 30122 by using so-called "straw donors," including limited liability companies (LLCs), to make contributions in the name of another, thereby evading certain disclosure provisions of the Federal Election Campaign Act (FECA).

The first complaint, Matter Under Review (MUR) 6485, alleged that an LLC (W Spann) was used as a conduit to hide the true source of a $1 million dollar contribution to the super PAC Restore Our Future supporting then-presidential candidate Mitt Romney. The second and third complaints, MURs 6487 and 6488, involved two dormant LLCs that plaintiffs allege were used as conduits by a single individual to hide the true source of two $1 million contributions to Restore Our Future in 2011. The fourth complaint, MUR 6711, alleged that an individual contributed more than $12 million to a super PAC called FreedomWorks for America using the names of a corporation and an LLC established solely to make such contributions. The final complaint, MUR 6930, alleged that Pras Michel contributed $875,000 to the super PAC Black Men Vote in the name of an LLC under his control.

On February 26, 2016, the Commission voted on whether to find "reason to believe" that a violation of the Act had occurred with respect to each of the administrative complaints, and failed to obtain the requisite four votes in each case for a reason to believe finding. Accordingly, the FEC dismissed all five complaints.

Case Status: The complaint was filed on April 22, 2016.

CLC Position/Involvement: Attorneys at the CLC and Democracy 21 are representing the plaintiffs in this action.

Independence Institute v. FEC
No. 1:14-cv-01500 (D.D.C), on appeal No. 14-5249 (D.C. Cir.)

Case Description: On September 2, 2014, the Independence Institute filed suit to challenge the federal electioneering communications disclosure provisions enacted by the Bipartisan Campaign Reform Act (BCRA). Plaintiff sought to run broadcast ads referring to Senator Mark Udall (D-CO)

shortly before Election Day without disclosing its donors. The challenged law requires such disclosure when groups spend more than $10,000 on "electioneering communications"—defined as any television or radio ad that mentions the name of a federal candidate within 60 days of a general or 30 days of a primary election.

On October 6, 2014, the U.S. District Court for the District of Columbia denied the plaintiff's requests for a three-judge court and a preliminary injunction and dismissed the challenge in its entirety, finding that the plaintiff's case was foreclosed by clear Supreme Court precedent. Plaintiff appealed that ruling to the D.C. Circuit, where the parties filed cross-motions for summary affirmance/ reversal in late 2014. The Court of Appeals found that the merits were not so clear as to warrant summary disposition and denied both motions, instead directing full merits briefing and argument.

Case Status: On December 11, 2015, the Court of Appeals entered a per curiam order directing the parties to file supplemental briefs to address whether the case was entitled to be heard before a three-judge court in light of the Supreme Court's recent decision in *Shapiro v. McManus*, 136 S. Ct. 450 (2015). On March 1, 2016, the court vacated the judgment below, finding that Plaintiffs' claims were not "wholly insubstantial" or "essentially fictitious" under *Shapiro*, and remanded the case for proceedings before a three-judge district court.

On May 4, 2016, the D.C. Circuit designated court of appeals Judge Patricia A. Millett and district court Judges Colleen Kollar-Kotelly and Amit P. Mehta to comprise the three-judge court. The court has set the following briefing deadlines: June 17, 2016, for Plaintiff's Motion for Summary Judgment; July 19, 2016, for the FEC's combined Opposition and Cross-Motion for Summary Judgment; August 12, 2016, for Plaintiff's combined Opposition/Reply; and September 2, 2016, for the FEC's Reply. Oral argument before the three-judge court is set for September 14, 2016.

CLC Position/Involvement: On May 15, 2015, the CLC, joined by Democracy 21 and Public Citizen, filed an amicus brief with the Court of Appeals urging the Court to affirm the district court decision. On September 19, 2014, the CLC, Democracy 21 and Public Citizen filed an amicus brief in the district court.

Public Citizen v. FEC
No. 1:14-cv-00148 (D.D.C.)

Case Description: On January 31, 2014, Public Citizen filed suit in federal court challenging the FEC's failure to investigate whether Intervenor-Defendant Crossroads GPS meets the federal definition of a "political committee." In 2010, the plaintiffs had filed an administrative complaint 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. Although the FEC's Office of the General Counsel recommended an investigation, the FEC deadlocked 3-3 in December 2013 on whether to investigate and consequently, dismissed the complaint.

Case Status: Public Citizen and the FEC filed cross-motions for summary judgment in mid-2014 and plaintiffs filed their reply brief on October 22. Intervenor-Defendant Crossroads GPS also filed a motion to intervene as a defendant, which the district court denied on August 11, 2014. The group appealed to the D.C. Circuit Court of Appeals, which reversed the lower court on June 5, 2015, finding that Crossroads GPS was entitled to intervention as of right.

Summary judgment proceedings in the district court were stayed during the pendency of Crossroads GPS's appeal and have now resumed. Under the new briefing schedule, Intervenor-Defendant Crossroads GPS filed its cross-motion for summary judgment on February 8, 2016; Public Citizen

filed its opposition to Crossroads GPS's motion on March 9, 2016; and the FEC and Crossroads GPS filed reply briefs on April 7, 2016.

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

Republican Party of Louisiana v. FEC
No. 15-1241 (D.D.C.)

Case Description: On August 3, 2015, plaintiffs (the Republican Party of Louisiana (LAGOP), the Jefferson Parish Republican Parish Executive Committee and the Orleans Parish Republican Executive Committee) filed suit in the U.S. District Court for the District of Columbia challenging the constitutionality of BCRA's provisions dictating how state and local parties must finance and disclose certain "federal election activity" (FEA).

In an opinion issued November 25, 2015, the court granted plaintiffs' application to convene a three-judge court, ruling that although "the Supreme Court has twice upheld BCRA's soft-money ban, and recently affirmed that it is still intact, … *McCutcheon* created widespread uncertainty over the central question presented here: whether truly independent campaign expenditures by political parties—if there can be such a thing—pose the type of corruption risk that the Supreme Court has held is necessary to justify limiting federal election spending." Therefore, plaintiffs' claims were not "so foreclosed by" Supreme Court precedent that they did not merit BCRA's special review procedure and its attendant right of direct appeal to the Supreme Court.

Case Status: Plaintiffs filed a motion for summary judgment on February 12, 2016. The FEC's combined opposition memorandum and cross-motion for summary judgment was filed March 18, 2016. On March 15, the FEC also filed a motion seeking to dissolve the three-judge court and remand to the single-judge court for dismissal for lack of jurisdiction, or, alternatively, to have the case dismissed outright by the three-judge court. Plaintiffs' opposition to the FEC's motion to dissolve or dismiss was filed on April 19, 2016, and the FEC's reply in support was filed on April 29, 2016. Oral argument on all of the pending motions has been scheduled for June 24, 2016.

CLC Involvement: The CLC, Democracy 21 and Public Citizen filed an amici brief on March 25, 2016, in defense of the soft-money limits. Lawyers from CLC, D21 and the law firm WilmerHale are part of the legal team, led by Scott L. Nelson of Public Citizen Litigation Group, representing amici curiae on the filing.

United States v. Menendez
No. 15-155 (D.N.J.), 15-3459 (3d Cir.)

Case Description: On April 1, 2015, a grand jury in the District of New Jersey returned a 22-count indictment against U.S. Senator Robert Menendez (D-NJ) and Salomon Melgen, a Florida doctor. Each defendant was indicted for one count of conspiracy, one count of violating the travel act, eight counts of bribery and three counts of honest services fraud in connection with a bribery scheme in which Menendez allegedly accepted gifts from Melgen in exchange for using the power of his Senate office to benefit Melgen's financial and personal interests. Menendez was also charged with one count of making false statements.

Case Status: Menendez filed 15 motions to dismiss the indictment on various grounds, including that it violated the Speech or Debate Clause in Article I of the U.S. Constitution, as well as separation-of-powers doctrine. The district court denied his motions on September 28 and October 8, 2015 with respect to the Speech or Debate Clause and separation-of-powers claims, and he appealed to the Third

Circuit. He filed his opening brief in the Third Circuit on January 11, 2016, and the United States filed its response on February 1, 2016. Oral argument before the Third Circuit was held on February 29, 2016.

CLC Involvement: CLC is tracking this case.

Van Hollen v. FEC
No. 11-cv-00766 (D.D.C.), Nos. 15-5016, 5017 (D.C. Cir.)

Case Description: On April 21, 2011, Representative Chris Van Hollen (D-MD) sued the FEC in the U.S. District Court for the District of Columbia, arguing that a 2007 regulation improperly narrowed the scope of federal disclosure requirements connected to electioneering communications.[1] Plaintiff challenged the regulation under the Administrative Procedure Act, alleging that it is arbitrary, capricious and contrary to the federal campaign finance statute it purports to implement.

On March 30, 2012, the district court granted summary judgment in favor of Van Hollen, finding that the regulation was beyond the scope of the FEC's authority and failed a *Chevron* step one analysis. Two non-profit groups intervening in the case appealed the decision to the D.C. Circuit Court of Appeals. On September 18, 2012, the Court of Appeals reversed the district court, but it remanded the case back to the district court for consideration of plaintiff's *Chevron* step two argument.

Case Status: On November 25, 2014, the district court held that the rule improperly narrowed the scope of the statute's disclosure requirements under *Chevron* step two. Defendant-intervenors again appealed, and on January 21, 2016, the Court of Appeals panel reversed the district court decision, finding that the rule was neither arbitrary nor capricious. Van Hollen filed a petition for rehearing en banc with the D.C. Circuit on March 7, 2016, and on April 5, 2016, Intervenor-Appellants filed their responses to the petition for rehearing.

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

Wagner v. FEC
No. 11-cv-1841 (D.D.C.), on appeal Nos. 12-5365, 13-5162 (D.C. Cir.), cert. denied sub. nom. *Miller v. FEC*, No. 15-428 (U.S.)

Case Description: On October 19, 2011, plaintiffs challenged the constitutionality of the federal government contractor contribution ban as applied to individuals who have personal services contracts with federal agencies.

On April 16, 2012, the court denied plaintiffs' motion for a preliminary injunction, and on November 5, 2012, the court granted summary judgment in favor of the FEC. Plaintiffs appealed to the D.C. Circuit Court of Appeals. On May 31, 2013, a three-judge panel of the D.C. Circuit vacated the judgment below on jurisdictional grounds, finding that the lower court should have certified constitutional questions to the en banc Court of Appeals instead of rendering a decision on the merits.

Case Status: On June 5, 2013, the district court certified two questions to the en banc Court of Appeals relating to: (1) whether the contractor contribution ban as applied to individuals such as plaintiffs violates principles of equal protection; and (2) whether the ban violates the First Amendment. On July 7, 2015, the en banc Court of Appeals unanimously upheld the ban, finding that

[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.

it was closely tailored to important state interests and did not deprive plaintiffs of equal protection under the law. Plaintiffs filed a petition for a writ of certiorari, which the Supreme Court denied on January 19, 2016.

CLC Position/Involvement: On February 27, 2013, the CLC, joined by Democracy 21 and Public Citizen, filed an amici brief with a three-judge panel of the D.C. Circuit Court of Appeals in support of the contractor contribution ban, and on August 9, 2013, these amici filed a brief with the en banc Court of Appeals. Previously, on August 23, 2012, the CLC filed an amici brief with the district court.

2. CASES CHALLENGING STATE/MUNICIPAL LAWS

Americans for Prosperity Foundation v. Harris
No. 14-cv-09448 (C.D. Cal.), No. 15-55446 (9th Cir.) (PI order), No. 16-55727 (9th Cir.) (final judgmt.)

Case Description: Nonprofit organizations Americans for Prosperity Foundation (AFP) and Thomas More Law Center challenged the Attorney General (AG) of California's collection of Internal Revenue Service (IRS) Form 990 Schedule B, which contains identifying information for their major donors. They argue the nonpublic disclosure requirement is unconstitutional as applied to them because it may deter individuals from financially contributing to them. The district court entered preliminary injunctions preventing the AG from demanding plaintiffs' Schedule B forms pending a trial on the merits.

On December 29, 2015, the Ninth Circuit vacated the injunctions and directed the lower court to enter new orders preliminarily enjoining the AG only from publicly disclosing, but not from collecting, the plaintiffs' Schedule B forms.

Case Status: On April 21, 2016, following a six-day bench trial, district court Judge Manuel L. Real entered an a permanent injunction in favor of plaintiff, holding that the AG's schedule B disclosure requirement is unconstitutional as-applied to AFP.

The state filed its notice of appeal on May 18, 2016, in the Ninth Circuit, and its opening brief is currently due October 25, 2016.

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

Citizens for Responsible Government Advocates v. Barland
No. 2:14-cv-01222 (E.D. Wisc.)

Case Description: On October 2, 2014, plaintiffs filed a complaint in the U.S. District Court for the Eastern District of Wisconsin to challenge Wisconsin's statutory provisions and regulations governing spending by outside groups coordinated with candidates. Plaintiffs sought to make communications in coordination with three candidates for Wisconsin office, and argued that if they did not expressly advocate the election or defeat of these candidates, they should be free to coordinate such communications with the candidates without limitation.

Case Status: On October 7, 2014, plaintiffs filed a motion for preliminary injunction seeking to enjoin the state's coordination laws and regulations. Before defendants filed a response, the court entered a temporary restraining order blocking enforcement of the law. The Court thereafter allowed briefing by the parties, and heard oral argument October 30. On November 6, 2014, the Court entered the parties' stipulated preliminary injunction and stayed further proceedings on the merits pending determination by the state Supreme Court regarding the correct interpretation of state campaign finance law. The case remains stayed.

CLC Position/Involvement: On October 29, 2014, the CLC filed an amicus brief urging the court to reject plaintiffs' motion for preliminary injunction, noting that the Supreme Court rejected an argument similar to plaintiffs' in *McConnell v. FEC*.

Coalition for Secular Govt. v. Williams
No. 12-cv-1708 (D. Colo.), on appeal No. 14-1469 (10th Cir.)

Case Description: In 2012, Plaintiff Coalition for Secular Government (CSG) filed suit in the U.S. District Court for the District of Colorado, seeking declaratory judgment and injunctive relief exempting it from Colorado's ballot issue committee registration and reporting requirements. CSG requested an as-applied exemption from the law on ground that it was a small group that intended to raise no more than $3500 for the dissemination of a public policy paper opposing a "Personhood" ballot initiative. The district court ruled for CSG, finding that the state's informational interest in requiring disclosure of a small group's spending on a statewide ballot initiative was too minimal to justify the burdens of complying with the law.

Case Status: On March 2, 2016, the Tenth Circuit Court of Appeals affirmed the district court, striking down the disclosure law as applied to CSG because given the "small-scale" nature of CSF's operations, the informational interest in [CSG's] disclosures is far outweighed by the substantial and serious burdens of the required disclosures." The due date for state's petition for certiorari is being extended to June 31, 2016.

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

Colorado Republican Party v. Williams
No. 2014-CV-31851 (Denver D. Ct.), on appeal 2014-CV-031851 (Colo. Ct. Appeals)

Case Description: The Colorado Republican party filed suit seeking a declaratory judgment allowing it to establish an "independent expenditure committee" that could operate outside the otherwise applicable state limits for contributions to political parties. On September 30, 2014, the district court granted summary judgment in favor of plaintiff, allowing the creation of such a party committee.

Case Status: Defendant-intervenor Colorado Ethics Watch filed a notice of appeal on October 6, 2014. Oral argument in the Colorado Court of Appeals was held on January 20, 2016.

On February 25, 2016, the court affirmed, holding that state law permitted the Party to establish an "independent" committee that could accept contributions in any amount and from any source as long as the committee remained completely independent of candidates, but declining to reach the Party's constitutional challenge to Colorado's campaign finance law.

CLC Position/Involvement: The CLC filed an amicus brief with the Colorado Court of Appeals on March 6, 2015, urging reversal of the district court.

Delaware Strong Families v. Attorney General of Delaware
1:13-cv-1746-SLR (D. Del.), on appeal No. 14-1887 (3d Cir.), cert. petition No. 15-1234 (U.S.)

Case Description: On October 23, 2013, plaintiff Delaware Strong Families (DSF) filed suit to challenge the Delaware Elections Disclosure Act, in particular its "electioneering communications" provisions, which require disclosure in connection to any communication distributed 30 days before a primary election or 60 days before a general election by "television, radio, newspaper or other periodical, sign, Internet, mail or telephone." DSF argues this law is unconstitutional both on its face and as applied to its voter guide regarding "family issues."

Case Status: On April 8, 2014, the district court granted DSF's motion for a preliminary injunction. The State of Delaware appealed to the Third Circuit Court of Appeals, which reversed the district court's grant of preliminary injunction on July 7, 2015. The district court on remand entered final judgment in Delaware's favor on October 10, 2015 as to all claims. The Third Circuit summarily affirmed the judgment on December 30, 2015.

DSF filed a petition for certiorari on March 30, 2016, and the state filed its opposition on May 16, 2016.

CLC Position/Involvement: The CLC, along with attorneys from the law firm WilmerHale, represents the Delaware Attorney General.

Independence Institute v. Williams
No. 1:14-cv-02426 (D. Colo.), on appeal No. 14-1463 (10th Cir.)

Case Description: Independence Institute challenged the constitutionality of Colorado's electioneering communication disclosure provisions, as applied to an ad it proposed to run on broadcast television referring to Governor John Hickenlooper shortly before Election Day. The challenged law requires donor disclosure when groups spend more than $1,000 on "electioneering communications"—defined as certain television, radio and print ads that mention the name of a state candidate within 60 days of a general election or 30 days of a primary election. Although plaintiff's ad constituted an electioneering communication under Colorado law, plaintiff argued that it did not constitute express advocacy or its functional equivalent, and thus could not be constitutionally subject to disclosure.

Case Status: On October 22, 2014, the district court rejected the challenge, granting summary judgment to the state on all claims. On November 5, 2014, Independence Institute appealed to the Tenth Circuit Court of Appeals. The Tenth Circuit heard oral argument on September 29, 2015, and on February 4, 2016, it affirmed the district court decision.

CLC Position/Involvement: On March 4, 2015, the CLC, joined by Democracy 21 and Public Citizen, filed an amici brief with Tenth Circuit, urging affirmance of the district court order dismissing the case. On September 25, 2014, the CLC also filed an amicus brief with the district court to defend the Colorado law.

Justice v. Hosemann
No. 3:11-cv-138-SA-SAA (N.D. Miss.), on appeal No. 13-60754 (5th Cir.)

Case Description: Plaintiffs filed suit to challenge the constitutionality of Mississippi's campaign finance disclosure requirements as they apply to small groups and individuals intending to support or oppose state constitutional ballot measures. On September 30, 2013, the U.S. District Court for the Northern District of Mississippi held that Mississippi's requirement that groups register as political committees upon receiving or spending in excess of $200 to support or oppose a ballot initiative is unconstitutional as applied to plaintiffs. The court applied exacting scrutiny, and found that the government had a legitimate informational interest in ballot initiative-related disclosure, but invalidated the law on grounds that it was not sufficiently tailored given the very low reporting threshold.

The state appealed to the Fifth Circuit Court of Appeals, and on November 14, 2014, the Fifth Circuit reversed the district court's decision. Applying exacting scrutiny, the appellate court found that the state's disclosure requirements were substantially related to the state's informational interest.

Case Status: On November 26, 2014, plaintiffs-appellees filed a petition for rehearing en banc, which was denied August 21, 2015. On November 19, 2015, plaintiffs filed a petition for certiorari, which was denied on April 4, 2016.

CLC Position/Involvement: On March 3, 2014, the CLC filed an amicus brief with the Fifth Circuit defending Mississippi's campaign finance disclosure laws, and on August 28, 2014, filed a supplemental letter brief addressing an intervening Fifth Circuit decision.

Lair v. Motl

No. 12-cv-0012 (D. Mont.); first appeal No. 12-35809 (lead case), 12-35889 (9th Cir.); appeal after remand No. 16-35424 (9th Cir.)

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. The limit on contributions from state political parties to candidates; and
5. The 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 regulating 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 *American Tradition Partnership v. Bullock*, and (b) the plaintiffs potentially could marshal evidence showing that the contribution limits prevented candidates from "amassing the resources necessary for effective [campaign] advocacy" as proscribed by *Randall v. Sorrell*.

On May 16, 2012, the district court granted summary judgment in part for plaintiffs, striking down the vote reporting requirement and the political civil libel provision, as well as the restriction on corporate contributions to independent expenditure committees. After a bench trial on the *Randall*–style challenge, the court struck down Montana's contribution limits on grounds that they were too low. In an opinion issued on October 10, 2012, the district court explained that a 2003 Ninth Circuit decision upholding Montana's contribution limits (*Montana Right to Life Ass'n v. Eddleman*) was not binding in light of the intervening decision in *Randall*.

On October 16, 2012, the Ninth Circuit stayed the district court's decision, finding that the state's appeal was likely to succeed because *Eddleman* remained binding precedent, and the Supreme Court denied plaintiffs' application to vacate the stay on October 23, 2012 (No. 12A-395). Appellate proceedings were then stayed pending the resolution of *McCutcheon v. FEC*. After the Supreme Court decided *McCutcheon* in April 2014, the Ninth Circuit reversed the lower court, finding the lower court applied the wrong legal standard because *Citizens United*—but not *Randall*—had partially abrogated *Eddleman* by limiting the state interests that can justify restrictions on campaign contribution.

Case Status: The Ninth Circuit remanded the case back to the district court to consider whether Montana's contribution limits are sufficiently tailored to the state's narrower interest in preventing quid pro quo corruption or its appearance. On March 4, 2016, both parties filed cross-motions for

summary judgment. On May 17, 2016, the district court again struck down the limits, finding broadly that the state had failed to marshal sufficient evidence that the contribution limits were needed to combat quid pro quo corruption.

On May 19, 2016, the state filed a notice of appeal and also moved the lower court to stay the judgment pending appeal.

CLC Position/Involvement: On July 2, 2014, the CLC, joined by Common Cause, Justice at Stake and the League of Women Voters, filed an amici brief urging the Ninth Circuit to overturn the district court ruling striking down Montana's political campaign contribution limits.

Montanans for Community Development v. Motl
No. 6:14-cv-55 (D. Mont.), on appeal No. 14-35896 (9th Cir.)

Case Description: On September 4, 2014, Plaintiff Montanans for Community Development (MCD) filed suit challenging an array of Montana state disclosure requirements. MCD, a nonprofit 501(c)(4) organization that seeks to circulate advertisements supporting or opposing the candidates or their policies, contends that it cannot be regulated as a political committee subject to disclosure requirements. The lawsuit challenges Montana's definitions of campaign contributions and expenditures as unconstitutionally vague and overbroad, and claims that the associated disclosure and reporting requirements are unconstitutionally burdensome as applied to groups registered for "nonpartisan issues advocacy."

On October 22, 2014, a federal district court denied plaintiff's request for preliminary relief, finding that Montana's definition of "political committee" and its disclosure requirements constitutional on their face and as applied to plaintiff. Plaintiff appealed the denial of preliminary relief to the Ninth Circuit, but subsequently dismissed its appeal on November 14, 2014.

Case Status: On June 23, 2015, MCD filed an amended complaint after the Montana legislature passed a new state disclosure law requiring more comprehensive donor disclosure. Both parties filed cross-motions for summary judgment on March 4, 2016, , following discovery, and the motions were heard on May 10, 2016.

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

O'Keefe v. Chisholm
No. 2:14-cv-139 (E.D. Wisc.), on appeal No. 14-1822 (7th Cir.), petition for certiorari filed, No. 14-872 (U.S.)

Case Description: Plaintiffs filed suit seeking to end a nearly two-year investigation into alleged illegal coordination between Wisconsin Governor Scott Walker and outside groups during the 2012 attempt to recall Walker. On May 6, 2014, district court Judge Rudolph Randa preliminarily enjoined the investigation based on the theory that the First Amendment forbids regulation of any coordinated spending beyond express advocacy or its functional equivalent. The court additionally ordered prosecutors to destroy evidence gathered in the case tying the Governor and his campaign to outside groups.

Case Status: Defendants appealed the preliminary injunction order to the Seventh Circuit Court of Appeals. On September 24, 2014, the Seventh Circuit reversed the district court and remanded the case to the district court with instructions to dismiss the suit, leaving further proceedings to the Wisconsin state courts. (See *Two Unnamed Petitioners, et al. v. Peterson* below). Plaintiffs filed a petition for certiorari with the U.S. Supreme Court, which was denied on May 18, 2015.

CLC Position/Involvement: On August 8, 2014, the CLC, joined by Democracy 21, filed an amici brief urging the Seventh Circuit to reverse the district court.

Rocky Mountain Gun Owners v. Gessler
No. 1:14-cv-02850 (D. Colo.), on appeal No. 15-1336 (10th Cir.)

Case Description: In June 2014, plaintiffs Rocky Mountain Gun Owners and Colorado Campaign for Life sent mailers to Colorado voters without making required disclosures, and consequently became the subject of a state enforcement action. On October 17, 2014, plaintiffs filed a complaint in federal district court challenging Colorado's electioneering communication disclosure requirements as facially overbroad, and challenging the associated $1,000 reporting threshold and the state's private enforcement scheme for campaign finance violations.

Case Status: On November 7, 2014, plaintiffs filed a motion for preliminary injunction. On December 16, 2014, the court denied plaintiffs' motion, finding that abstention was appropriate under *Younger v. Harris* pending the resolution of parallel state administrative proceedings. On December 22, the state filed a motion to dismiss on *Younger* abstention grounds, which the court granted on August 12, 2015. Plaintiffs appealed the lower court's abstention ruling to the Tenth Circuit Court of Appeals and on November 3, 2015, filed their opening brief. Oral argument is being rescheduled.

CLC Position/Involvement: The CLC filed an amicus brief in the district court to defend the Colorado disclosure law on November 25, 2014.

Texas Democratic Party v. King Street Patriots
No. D-1-GN-11-002363 (D. Ct. Travis Co.), No. 03-12-00255-CV (Tex. App.—Austin), No. 15-0320 (Tex. S. Ct.)

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 (KSP). The Party alleges that KSP, 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, KSP 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.

On March 27, 2012, the state district court rejected KSP's counterclaim, and upheld the challenged provisions of Texas campaign finance law.

Case Status: KSP appealed the decision to the state Court of Appeals (Third District). On October 8, 2014 the Court of Appeals affirmed the lower court decision upholding Texas campaign finance law. On April 27, 2015, KSP filed a petition for review by the Supreme Court of Texas, which the Court granted on September 11, 2015. The merits briefing before the Texas Supreme Court was complete as of November 17, 2015.

CLC Position/Involvement: On November 10, 2015, the CLC filed an amicus brief with the Texas Supreme Court to defend the constitutionality of Texas's campaign finance laws. The CLC previously filed amicus briefs on August 3, 2012 in the Texas Court of Appeals, and September 21, 2011 in the state district court.

Thompson v. Dauphinais
3:15-cv-218 (D. Alaska)

Case Description: On November 10, 2015, plaintiffs—several individuals and a political party subdivision—filed a constitutional challenge to multiple Alaska state campaign finance laws, including the $500 annual limit on individual contributions to a candidate (Count One); the $500 annual limit on individual political contributions to a group that is not a political party (Count Two); the annual limits on total political contributions a candidate may solicit or accept from nonresidents of Alaska (Count Three); and the annual limits on what a political party (including local subdivisions thereof) may contribute to a candidate (Count Four).

Case Status: Plaintiffs moved for partial summary judgment on January 7, 2016, seeking to enjoin the out-of-state contribution limits. The state opposition, filed February 1, 2016, argued that the nonresident limits help limit quid pro quo corruption and serve the state interest in "protecting Alaska's system of self-government from outside control," relying on *Bluman v. FEC* for the latter argument. The state also moved for partial summary judgment on the ground that plaintiffs lacked standing on February 25, 2016. A hearing on both summary judgment motions was held on April 11, 2016, and the court granted the state's motion and dismissed several of plaintiffs' claims on standing grounds. A seven-day trial on the remaining counts was held April 25 through May 3, 2016. Simultaneous post-trial briefs and proposed findings of fact and conclusions of law are due May 31, 2016, with replies due June 14, 2016.

CLC Position/Involvement: The CLC is tracking this case.

Two Unnamed Petitioners, et al. v. Chisholm, et al.
Nos. 2013AP002504-508-W, 2014AP296-OA, 2014AP417-421-W (Wis. S. Ct.),

Case Description: These consolidated cases center around multiple challenges to the so-called "John Doe" investigation of alleged illegal coordination between the campaign of Wisconsin Governor Scott Walker and outside groups in the 2012 recall election. On January 10, 2014, the state judge presiding over the investigation quashed the state's subpoenas on constitutional grounds. The investigation was halted pending resolution of the various petitions before the state Supreme Court.

Case Status: The state respondents filed their merits briefs with the Wisconsin Supreme Court on March 5, 2015. On July 16, 2015, the state Supreme Court shut down the investigation on the basis that the alleged coordination involved only "issue advocacy," rather than "express advocacy," putting it beyond the reach of state campaign finance law.

In an order issued December 2, 2015, the court denied the prosecutors' motion for reconsideration and terminated the appointment of the special prosecutor Francis D. Schmitz. On December 18, 2015, three state district attorneys moved to intervene in the case for the purposes of seeking review from the U.S. Supreme Court.

On February 5, 2016, the Wisconsin Supreme Court ruled that the district attorneys could file unredacted documents, which remain subject to a secrecy order, with the U.S. Supreme Court under seal. But the court barred the state prosecutors from making any changes to the secrecy order to allow their outside counsel to review unredacted documents, effectively preventing them from obtaining the assistance of outside pro bono counsel to pursue a petition for certiorari at the U.S. Supreme Court.

On April 29, 2016, the prosecutors filed a petition for certiorari, subject to a motion to file the petition under seal. The Supreme Court granted permission to file under seal on May 23, 2016.

CLC Position/Involvement: On March 17, 2015, the CLC, along with Democracy 21 and Public Citizen, filed an amicus brief to urge the Wisconsin Supreme Court to affirm the constitutionality of Wisconsin's coordination law and regulations. CLC continues to consult with the intervenor district attorneys.

Utah Taxpayers Ass'n v. Cox
No. 15-805 (D. Utah)

Case Description: Plaintiffs Utah Taxpayers Association, Utah Taxpayers Legal Foundation, and Libertas Institute filed suit on November 17, 2015 challenging certain provisions of Utah's new campaign finance disclosure law, HB 43, which was adopted in 2013 after former state Attorney General John Swallow allegedly directed campaign contributions from payday lenders through a nonprofit to hide the donors' identities. The provisions at issue require donor disclosure from nonprofits that spend $750 or more for or against candidates or ballot measures.

Specifically, plaintiffs challenge the definitions of "political issues expenditure" and "political purposes" (Utah Code Ann. § 20A-11-101(39), (40)), and the associated reporting requirements for corporations making "expenditures" or "political issues expenditures" (Utah Code Ann. §§ 20A-11-701, 20A-11-702), as unconstitutionally vague and overbroad facially and as applied to plaintiffs. Plaintiffs also contend that the disclosure requirements are unconstitutional under the Equal Protection Clause because labor organizations are not subject to the same reporting rules.

Case Status: The complaint was filed on November 17, 2015, and the state filed its answer on January 13, 2016. Dispositive motions are due May 27, 2016 and oral argument is set for June 29, 2016.

CLC Position/Involvement: The CLC is tracking this case.

Wolfson v. Concannon
No. 3:08-cv-08064 (D. Ariz.), on appeal No. 11-17634 (9th Cir.)

Case Description: This case involves a First Amendment challenge to multiple canons in the Arizona Code of Judicial Conduct, including canons that prohibit judicial candidates from making speeches on behalf of political organizations or candidates for public office; publicly endorsing or opposing political candidates; soliciting funds on behalf of, or contributing funds to, any candidate or political organization in excess of the amounts permitted by law; actively participating in any political campaign other than his/her own; and personally soliciting campaign contributions other than through a campaign committee.

The district court upheld the canons, granting summary judgment in favor of the state. On May 9, 2014, a three-judge panel of the Ninth Circuit Court of Appeals struck down the canon prohibiting judicial candidates from personally soliciting political contributions, as well as the canon prohibiting judicial candidates from endorsing, supporting or campaigning for non-judicial candidates—but only as these restrictions applied to non-judge candidates.

Case Status: On September 26, 2014, the Ninth Circuit granted a petition for rehearing en banc, but the en banc proceedings were stayed pending the U.S. Supreme Court's resolution of *Williams-Yulee v. Florida Bar*. On January 27, 2016, the en banc panel upheld Arizona's canons. Plaintiffs' petition for certiorari from the U.S. Supreme Court is due June 25, 2016.

CLC Position/Involvement: On June 12, 2015, CLC joined several other public interest groups in filing an amicus brief urging the en banc panel to uphold the provisions. The CLC also filed an amici brief with other groups on June 16, 2014 in support of the petition for en banc review.