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Campaign Legal Center Litigation Summary
May 2015

1. U.S. SUPREME COURT

a. Active cases

***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.

a. Past cases/orders

***McCutcheon v. FEC*, 12-cv-01034-JEB-JRB-RLW (D.D.C.) (three-judge court), No. 12-536 (U.S.)**

Case Description: The Republican National Committee (RNC) and donor Shaun McCutcheon brought suit on June 22, 2012 to challenge the $74,600 aggregate limit on contributions to non-

candidate committees and the $48,600 aggregate limit on contributions to candidate committees in a two-year election cycle.[1]

Case Status: On September 28, 2012, a three-judge district court dismissed the case, finding that the aggregate limits prevented circumvention of the base contribution limits. On April 2, 2014, the Supreme Court struck down the aggregate limits, holding that they did not meaningfully prevent circumvention or otherwise prevent quid pro quo corruption or its appearance.

CLC Position/Involvement: The CLC filed an *amici* brief with the Supreme Court on July 25, 2013, on behalf of numerous citizen, civil rights and watchdog groups. The Legal Center also coordinated the *amici* effort in defense of the law. The CLC and Democracy 21 previously filed an *amici* brief in support of the FEC on July 10, 2012 with the three-judge district court.

2. CASES CHALLENGING FEDERAL CAMPAIGN FINANCE LAWS/REGULATIONS

***Libertarian National Committee (LNC) v. FEC*, 11-cv-00562 (D.D.C.), on appeal Nos. 13-5088, 13-5094 (D.C. Cir.)**

Case Description: In March 2011, the LNC filed suit to challenge the federal contribution limits as applied to bequests from decedents to political parties, specifically a $217,734 bequest from Raymond Groves Burrington to the LNC. The LNC argued that the FEC's requirement that it accept this bequest in annual increments of $30,800 as per the contribution limits, instead of in one lump sum, infringed on its First Amendment rights. On May 4, 2012, the LNC moved the court to certify constitutional questions to the Court of Appeals pursuant to 2 U.S.C. § 437(h).

On September 28, 2012, the district court declined to certify the constitutional questions as formulated by plaintiff and granted summary judgment to the FEC, finding that a facial challenge to the contribution limits was precluded by Supreme Court precedent. The court, however, amended the constitutional question and certified the following, "Does imposing annual contribution limits against the bequest . . . violate the First Amendment rights of the Libertarian National Committee?"

Case Status: On February 3, 2014, the FEC filed to argue that the case was moot, because disbursements had depleted the bequest to the LNC to only $7,534, and thus the applicable contribution limit ($32,400) in no way prevented the balance from being received in its entirety by the LNC. On March 26, 2014, the *en banc* court dismissed the case as moot.

CLC Involvement: The CLC tracked this case.

***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.

Case Status: On October 6, 2014, the U.S. District Court for the District of Columbia dismissed the

[1] The amounts listed were the aggregate limits applicable in the 2013-2014 election cycle.

challenge. On October 8, 2014, plaintiff filed a notice of appeal. The FEC moved for summary affirmance on November 25, 2014, and the D.C. Circuit Court of Appeals denied the motion on February 20, 2015. The parties are currently briefing the merits.

CLC Position/Involvement: On May 15, 2015, the CLC, joined by Democracy 21 and Public Citizen, filed an *amici* 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 *amici* brief in the district court.

***New York Republican State Committee v. SEC*, No. 1:14-cv-01345 (D.D.C.), on appeal No. 14-5242**

Case Description: The state Republican parties of New York and Tennessee challenged an SEC rule barring investment firms from managing state assets for two years after a firm or its associates make more than *de minimis* contributions to officeholders or candidates who have or would have power to award investment contracts. The rule was implemented after SEC and state investigations uncovered extensive evidence of fraud in the award of state investment contracts.

Case Status: On September 30, 2014, the U.S. District Court for the District of Columbia dismissed the suit for lack of subject matter jurisdiction. On October 6, 2014, plaintiffs appealed the district court's decision to the D.C. Circuit Court of Appeals. The Court of Appeals consolidated the appeal with the plaintiffs' new petition (No. 14-1194) on November 12, 2014. Oral argument was heard March 23, 2015.

CLC Position/Involvement: On August 29, 2014, the CLC, joined by Democracy 21, filed an *amici* brief with the district court in defense of the SEC rule, and on January 28, 2015, filed an *amici* brief with the Court of Appeals.

***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 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 of whether Crossroads GPS had violated the law, the FEC deadlocked 3-3 in December 2013 on whether to investigate and consequently, dismissed the administrative complaint.

Public Citizen filed its motion for summary judgment on July 30, 2014, and its reply brief on October 22, 2014.

Case Status: Crossroad GPS moved for leave to intervene in the case, which the district court denied on August 11, 2014. Crossroads GPS appealed the ruling, and the district court proceedings have been stayed pending resolution of the appeal.

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

***Republican National Committee v. FEC,* No. 1:14-cv-0053 (D.D.C.), on appeal No. 14-5241 (D.C. Cir.)**

Case Description: On May 23, 2014, a group of Republican party committees sued the FEC in the U.S. District Court for the District of Columbia challenging the constitutionality of the BCRA provisions prohibiting national party committees from raising money outside of the federal limits and source restrictions to finance independent expenditures. The committees argued that they had a First Amendment right to solicit and receive unlimited contributions to a separate account devoted to independent expenditures, i.e., a party "Super PAC."

This case was consolidated with a similar challenge to the BCRA soft money limits brought by committees of the Libertarian Party (***Rufer v. FEC,* 1:14-cv-00837 (D.D.C.), on appeal 14-5240 (D.C. Cir.)**).

Case Status: On September 22, 2014, the district court submitted constitutional questions for certification to the *en banc* D.C. Circuit Court of Appeals. On November 19, 2014, the Republican plaintiffs voluntarily dismissed the proceedings before the D.C. Circuit; the Libertarian plaintiffs voluntarily dismissed their challenge on December 2, 2014.

CLC Involvement: The CLC tracked 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.[2] 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 have again appealed. Van Hollen's opening brief was filed on May 11, 2015.

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.

[2] 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.

***Wagner v. FEC*, No. 11-cv-1841 (D.D.C.), on appeal No. 12-5365 (D.C. Cir.)**

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 government contractor contribution ban as applied to individuals who have personal services contracts with federal agencies. Plaintiffs filed an amended complaint and motion for preliminary injunction on January 31, 2012.

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. The panel remanded the case to the district court.

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. The *en banc* Court of Appeals heard oral argument on September 30, 2014.

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.

3. CASES CHALLENGING STATE/MUNICIPAL LAWS

***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.

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*.

***Colorado Republican Party v. Gessler*, 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. The parties are currently briefing the appeal.

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 (DSF) v. Biden*, 1:13-cv-1746-SLR (D. Del.), on appeal No. 14-1887 (3rd Cir.)**

Case Description: On October 23, 2013, plaintiff 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 January 14, 2014, plaintiff moved for a preliminary injunction. The court entered a preliminary injunction against the defendants on April 8, 2014.

The State of Delaware filed a notice of appeal to the U.S. Court of Appeals for the Third Circuit on April 10, 2014, and filed its brief on the appeal on June 2, 2014. The Third Circuit heard oral argument on October 28, 2014.

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

***Dickranian v. City of Los Angeles*, No. 2:12-cv-05145-ODW-SS (C.D. Cal.), on appeal No. 12-56844 (9th Cir.)**

Case Description: On June 13, 2013, plaintiff Laurel Dickranian filed suit in U.S. District Court for the Central District of California challenging Los Angeles disclaimer and disclosure requirements as unconstitutional. Dickranian spent nearly $8,000 sending letters to more than 17,000 Los Angeles voters urging them to elect a particular candidate for the office of City Attorney. The City's law requires those making independent expenditures in city candidate or ballot measure elections to file a campaign finance report and a copy of the communication. The district court summarily dismissed Dickranian's complaint and upheld the City's disclosure law.

Case Status: Dickranian appealed the district court's dismissal to the Ninth Circuit Court of Appeals. On November 7, 2014, the parties notified the Ninth Circuit that they had settled the case.

CLC Position/Involvement: The CLC filed an *amicus* brief in support of the City's law with the Ninth Circuit on June 24, 2013.

***Galassini v. Town of Fountain Hills*, 2:11-cv-02097-JAT (D. Ariz.), on appeal 14-17541 (9th Cir.)**

Case Description: In 2011, plaintiff Dina Galassini organized friends to protest a new bond measure. After the town clerk informed her that the activity might require her to register as a "political committee," Galassini challenged Arizona's definition of "political committee" as unconstitutionally vague and overbroad, and argued that the statute's imposition of registration and reporting requirements on groups raising and spending more than $500 to influence ballot initiatives is unconstitutional. On September 30, 2013, the district court granted partial summary judgment to the plaintiffs, finding that Arizona's definition of "political committee" is unconstitutionally vague and overbroad on its face.

Following its ruling of September 30, the district court called for briefing on whether to enjoin the state campaign finance statutes "to the extent those statutes depend on the definition of political committee." The State of Arizona, as intervenor-defendant, submitted a supplemental brief on October 17, 2013 stressing the inappropriateness of injunctive relief and urging the court to at least clarify the terms of such relief. On December 5, 2014, however, the court affirmed the declaratory relief in its early ruling, holding that "the definition of "political committee" in A.R.S. § 16-901(19) is vague, overbroad, and consequently unconstitutional in violation of the First Amendment."

Case Status: The intervenor-defendant State of Arizona filed a notice of appeal on December 24, 2015. The state's opening brief is due June 1, 2015.

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

***Greenbaum a/k/a Giant Cab Co. v. Bailey*, No. 13-cv-00426-MCA/ACT (D.N.M.), on appeal No. 13-2176 (10th Cir.)**

Case Description: On May 6, 2013, plaintiffs filed a lawsuit challenging an Albuquerque city ordinance prohibiting corporations, partnerships or other business entities from making contributions to candidates for city office. Plaintiffs also allege that the City's law impermissibly distinguishes among speakers, violating their rights of free speech and equal protection under the First and Fourteenth Amendments.

On September 4, 2013, the district court struck down Albuquerque's ordinance. Although the court acknowledged that such bans are constitutional as a general matter, it held that the City Council had failed to develop an adequate record demonstrating that corporate campaign contributions would lead to a perception of corruption among Albuquerque voters or that they would be employed as a means of circumventing individual contribution limits.

Case Status: The decision was appealed by The Committee to Elect Pete Dinelli Mayor as intervenor-defendant. On March 31, 2015, The Tenth Circuit Court of Appeals dismissed the appeal on standing grounds, finding that the Committee had no personal stake in the litigation.

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

***Grocery Manufacturers Association (GMA) v. Ferguson*, No. 14-2-00027-5 (Thurston Cnty. Super. Ct., Wash.), consolidated with *State v. GMA*, No. 13-2-02156-8**

Case Description: In October 2013, the Washington Attorney General's Office filed suit in Thurston County Superior Court against the GMA, alleging that it had violated Washington campaign

disclosure laws by spending more than $7 million to oppose an unsuccessful state ballot measure, Initiative 522, without disclosing the true source of the contributions. Initiative 522 would have required labeling of genetically engineered foods in Washington.

On January 3, 2014, the GMA filed a countersuit challenging the constitutionality of Washington's disclosure laws. Specifically, the GMA alleges that Washington's definition of "political committee" and associated reporting requirements for committees are unconstitutional as applied to GMA. GMA also argued that a requirement that committees collect $10 from 10 registered Washington voters before making PAC-to-PAC transfers is unconstitutional both on its face and as applied to ballot initiative committees.

Case Status: A motion to consolidate the enforcement action with GMA's complaint was granted on January 31, 2014. On June 13, 2014, the superior court invalidated the requirement that GMA collect $10 in contributions from 10 registered Washington voters before donating to a separate political committee. However, the court rejected GMA's request to dismiss the entire enforcement action on constitutional grounds, ruling that the state's political committee definition and associated disclosure requirements were constitutionally applied and allowing the case to continue to trial.

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

***Hispanic Leadership Fund and Freedom New York v. Walsh*, No. 1:12-cv-1337 (N.D.N.Y.)**

Case Description: The plaintiffs challenged New York's $5,000 limit on corporate contributions and its $150,000 annual aggregate limit on contributions from individuals, as applied to contributions to committees making only independent expenditures. In addition, plaintiffs challenged New York's political committee disclosure law, claiming that the law requires groups making independent expenditures to "promote the success or defeat of a political party or principle" to register and report as a committee regardless of such group's major purpose.

Case Status: On October 23, 2012, the district court denied HLF's motion for an injunction to block the state's campaign finance rules, but relied heavily on an analysis of the "balance of the equities," instead of an assessment of plaintiffs' likelihood of success on the merits.

On August 28, 2014, the Court granted plaintiffs' motion for summary judgment and enjoined enforcement of the contribution limits as applied to independent expenditure committees. Defendants filed multiple appeals, but voluntarily dismissed all appeals. On December 2, 2014, the parties settled under the terms of the court's summary judgment decision.

CLC Position/ Involvement: The CLC tracked this case.

***Illinois Liberty PAC v. Madigan*, No. 12-cv-05811 (N.D. Ill.), on appeal No. 12-3305 (7th Cir.)**

Case Description: Illinois Liberty PAC (ILP) filed suit in the U.S. District Court for the Northern District of Illinois to challenge the constitutionality of Illinois's state contribution limits, specifically, the $50,000 limit on contributions from PACs to state candidates and the $5,000 limit on contributions from individuals to candidates. ILP argued that the law authorizes political parties to make far larger contributions and therefore discriminates against non-party political speakers in favor of political parties. On October 5, 2012, the court denied plaintiff's motion for preliminary relief, allowing the contribution limits to stand. ILP appealed the decision to the Seventh Circuit, which summarily affirmed the district court's ruling on November 15, 2012.

Case Status: On May 10, 2013, ILP filed their second amended complaint in the district court, adding an additional plaintiff and an additional argument to support the claim that Illinois' contribution limits impermissibly favor non-party speakers. Specifically, ILP argued that the limits are unconstitutional insofar as they classify "legislative caucus committees" as political party committees, thereby treating them more favorably than PACs, individuals and corporations.

On August 9, 2013, the state filed a motion to dismiss. The court granted the state's motion in part on March 3, 2014, dismissing ILP's challenge with prejudice as to the First Amendment and Equal Protection claims already considered at the preliminary injunction stage. However, although noting that it "strongly suspects that legislative caucus committees are sufficiently similar to political party committees for purposes of constitutional analysis," the court denied the motion with respect to the Act's treatment of legislative caucus committees given the incomplete record on that question. Cross-motions for summary judgment on the outstanding claims were filed in December 2014.

CLC Position/Involvement: On September 18, 2012, the CLC filed an *amici* brief with the district court, defending the state contribution limits. The CLC also filed a brief opposing an injunction pending appeal with the Seventh Circuit on October 18, 2012. On August 30, 2013, the CLC filed another *amici* brief in the district court supporting Illinois's motion to dismiss.

***Independence Institute v. Williams (f/k/a Independence Institute v. Gessler)*, 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 dismissed the challenge to Colorado's disclosure provisions. On November 5, 2014, plaintiffs appealed to the Tenth Circuit Court of Appeals. The plaintiffs' brief on appeal was filed January 7, 2015, and the state's brief was filed February 25, 2015.

CLC Position/Involvement: On March 4, 2015, the CLC, joined by Democracy 21 and Public Citizen, filed an *amici* brief with Tenth Circuit, urging the Court of Appeals to affirm the district court order dismissing the case. On September 25, 2014, the CLC filed an *amici* 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.

Case Status: The state appealed to the Fifth Circuit Court of Appeals. On November 14, 2015, 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. On November 26, 2014, plaintiffs-appellees filed a petition for rehearing *en banc*. The state defendants-appellants filed their opposition to the petition on December 22, 2014.

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 (f/k/a Lair v. Murry)*, No. 12-cv-0012 (D. Mont.), on appeal Nos. 12-35484, 12-35538, 12-35809 (lead case), 12-35889 (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 could potentially 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 provisions regulating the discussion of candidates' voting records in campaign materials, *i.e.*, the voting reporting requirement and the political civil libel provision, as well as the restriction on corporate contributions to independent expenditure committees.

On June 20, 2012, the state moved for summary judgment on the *Randall*–style challenge to the contribution limits. The district court denied the motion on June 29, 2012. After a bench trial on this issue, the court struck down Montana's contribution limits on grounds that they were too low and prevented candidates from "amassing the resources necessary for effective campaign advocacy."

Case Status: On October 16, 2012, the Ninth Circuit stayed the district court's decision invalidating Montana's contribution limits pending the state's appeal. The Supreme Court denied plaintiffs' application to vacate the stay on October 23, 2012 (No. 12A-395). The Ninth Circuit stayed appellate proceedings pending the resolution of *McCutcheon v. FEC*. After the Supreme Court decided

McCutcheon, the Ninth Circuit ruled on May 26, 2015 to reverse the district court, holding that the lower court had applied the wrong standard of review to the contribution limits.

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.

***Lake Travis Citizens Council v. Ashley*, 1:14-cv-00994 (W.D. Tex.)**

Case Description: Plaintiffs challenge the following provisions of Texas law: (1) the statutory definitions of "campaign expenditure" and "political committee"; and (2) the Texas Ethics Commission rule that provides that a group will meet the "principal purpose" test for political committee status if "the group expends more than 25 percent of its annual expenses and other resources to make political expenditures within a calendar year."

Case Status: The **c**omplaint was filed on October 31, 2014, and the answer was filed on December 12, 2014.

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

***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 requires persons doing business with the city and lobbyists to comply with 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 Amendments and Section 2 of the Voting Rights Act (VRA).

On April 24, 2008, plaintiffs moved for a preliminary injunction on their First and Fourteenth Amendment claims against the pay-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 plaintiffs' motion, 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 decision. Plaintiffs filed a petition for *certiorari* (No. 11-1153), which was denied by the U.S. Supreme Court on June 25, 2012.

Case Status: In 2012, the parties filed cross-motions for summary judgment in the district court on their remaining claims pertaining to the trigger provisions of the public financing program. At issue were (1) provisions that raise/eliminate the expenditure limits for participating candidates facing high-spending non-participating opponents, and (2) the "sure winner" provision that provides participants with additional matching funds when an opponent's spending and contributions cross

20% of the applicable expenditure limit and/or meet other trigger criteria. (Plaintiffs and the City stipulated that a provision that provides participating candidates with additional matching funds when their non-participating opponents spend above a certain amount was unconstitutional.) On April 4, 2013, the district court granted summary judgment in part to plaintiffs, in part to defendants, and struck down the 20% trigger in the "sure winner" provision, but upheld all other challenged provisions.

On August 13, 2013, the parties filed a stipulation wherein the plaintiffs agreed to voluntarily dismiss the remaining claims in the amended complaint. However, on October 10, 2014, plaintiffs asked the court to reconsider its 2009 decision upholding NYC's contribution restrictions in light of the Supreme Court's decision in *McCutcheon v. FEC*. The motion was fully briefed as of the end of November 2014.

CLC Position/Involvement: The CLC is 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. Plaintiffs filed a petition for *certiorari* with the Supreme Court, which was denied on May 18, 2015.

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

***Protectmarriage.com v. Bowen*, No. 2:09-cv-00058 (E.D. Calif.), on appeal No. 11-17884 (9th Cir.), petition for certiorari filed, No. 14-434 (U.S.)**

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 their contributors of $100 or more. Plaintiff was a committee supporting Proposition 8, a ballot measure pertaining to same-sex marriage. Specifically, plaintiffs sought an as-applied "blanket exemption" from the law, claiming that compelled disclosure of their contributors would subject them to threats, harassment, and reprisals. Additionally, plaintiffs contended that the law's $100 threshold for the disclosure of contributors was 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.

Case Status: Plaintiffs appealed the decision to the Ninth Circuit Court of Appeals on December 2, 2011. On May 20, 2014, the Ninth Circuit affirmed the district court's dismissal of plaintiffs' facial

challenge to California's disclosure law, and dismissed the appeal as moot with regard to plaintiffs' as-applied challenges. The Ninth Circuit denied a petition for rehearing on July 16, 2014.

On March 2, 2015, the Supreme Court denied plaintiffs' petition for *certiorari*.

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

***Rocky Mountain Gun Owners v. Gessler*, No. 1:14-cv-02850 (D. Colo.)**

Case Description: In June 2014, plaintiffs Rocky Mountain Gun Owners (RMGO) and Colorado Campaign for Life (CCL) 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 the U.S. District Court for the District of Colorado 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. The case also includes claims brought under Colorado's state constitution.

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 23, 2014, in the state enforcement proceedings, RMGO and CCL were ordered to file electioneering communications reports and pay fines of $8450 each. The groups did not appeal this ruling.

CLC Position/Involvement: The CLC filed an *amici* brief in this case 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.), on appeal No. 03-12-00255-CV (Tex. App.—Austin)**

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.

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

***Three Unnamed Petitioners, et al. v. Peterson, 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 has been halted pending resolution of the various petitions before the state Supreme Court.

Case Status: On March 5, 2015, the state respondents filed their merits briefs with the Wisconsin Supreme Court. On March 27, the Court cancelled the scheduled oral argument, citing concerns regarding the sealed nature of the filings in the case.

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

***Vermont Right to Life Committee, Inc. v. Sorrell*, 09-cv-00188 (D. Vt.), on appeal No. 12-2904 (2d Cir.), cert. petition No. 14-380 (U.S.)**

Case Description: In August 2009, Vermont Right to Life Committee (VRLC) filed a complaint challenging several aspects of Vermont's campaign finance law, arguing that the law violates the First Amendment by regulating VRLC 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 to also challenge the state contribution limits as applied to its political committee making only independent expenditures, as well as the $100 reporting threshold for contributions to a committee.

On June 21, 2012, the district court granted the state's motion for summary judgment, upholding both the challenged disclosure law and, notably, the $2,000 contribution limit as applied to VRTL's independent expenditure committee (IEC). In support of this holding, the Court highlighted the specific facts of the case, including that VRLC's IEC was intertwined with its conventional PAC with a "fluidity of funds" and overlapping governance between the committees.

Case Status: Plaintiffs appealed to the Second Circuit Court of Appeals on July 18, 2012. On July 2, 2014, the Second Circuit affirmed the district court. In particular, it upheld the contribution limit as applied to VRLC's IEC, determining that the "independent" committee was "functionally indistinguishable" from VRLC given "the overlap of staff and resources, the lack of financial independence, the coordination of activities, and the flow of information between the entities."

The Supreme Court denied VRL's petition for *certiorari* on January 12, 2015.

CLC Position/Involvement: The CLC filed an *amicus* brief with the Second Circuit to defend Vermont's laws on December 6, 2012.

***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.

Case Status: 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. 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*.

CLC Position/Involvement: On June 16, 2014, the CLC joined the Brennan Center for Justice, the Arizona Judges' Association, the American Judicature Society and Justice at Stake in filing an *amici* brief urging the Ninth Circuit to review the case *en banc*.

***Yamada v. Kuramoto*, 10-cv-00497 (D. Haw.), on appeal sub nom. *Yamada v. Weaver*, 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" and "expenditure";
2. The electioneering communications reporting requirements;
3. The disclaimer requirements 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 its challenge to the contribution limits as applied to independent expenditure committees. On October 29, 2010, the district court denied plaintiffs' motion for a preliminary injunction on the remaining claims. 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 district court's March 2011 decision to the Ninth Circuit Court of Appeals. On May 20, 2015, the Ninth Circuit affirmed the district court, rejecting all of plaintiffs' remaining legal claims.

CLC Position/Involvement: On September 19, 2012, the CLC filed an *amicus* brief with the Ninth Circuit to defend Hawaii's disclosure laws and its restriction on contributions from government contractors.