COURT CASES OF INTEREST

April 2013

1. U.S. SUPREME COURT

a. Pending cases

***James v. FEC*, No. 12-cv-1451 (D.D.C), appeal filed No. 12-683 (U.S. Sup. Ct.)**

Case Description: On August 31, 2012, Virginia James filed suit to challenge the biennial limits on contributions to federal candidates. Federal law imposes a $46,200 aggregate limit on contributions to candidates and $70,800 aggregate limit on contributions to PACs and party committee in a two-year election cycle. James argued that she wished to contribute the full $117,000 to candidates, instead of dividing the total aggregate amount between contributions to candidates and contributions to PACs/parties as required by the law.

On September 5, 2012, James filed a motion for preliminary injunction and a motion for a three-judge court. On September 19, 2012, the court stayed the proceedings pending a decision in *McCutcheon v. FEC*.

Case Status: On October 31, 2012, the three-judge court denied plaintiff's motion for a preliminary injunction and dismissed the challenge. On November 1, 2012, plaintiff appealed directly to the Supreme Court. The appeal was distributed at the Supreme Court's March 15 conference; no order has yet issued.

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

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

Case Description: The Republican National Committee (RNC) and donor Shaun McCutcheon brought suit on June 22, 2012 to challenge the biennial limits on contributions by individuals. Despite U.S. Supreme Court precedent upholding aggregate contribution limits, plaintiffs challenged both the $70,800 aggregate limit on contributions to non-candidate committees and the $46,200 aggregate limit on contributions to candidate committees in a two-year election cycle.[1]

Case Status: On September 28, 2012, the three-judge district court denied plaintiffs' motion for a preliminary injunction, finding that they were unlikely to succeed on the merits of their challenge.

On October 26, 2012, plaintiffs appealed to the Supreme Court; the Court accepted the appeal, noting probable jurisdiction on February 19, 2013.

CLC Position/Involvement: The CLC and D21 plan on filing an *amici* brief with the Supreme Court to defend the limits, as well as coordinating the *amici* effort. The CLC and D21 previously filed an *amici* brief in support of the FEC on July 10, 2012 with the district court.

***Shelby County v. Holder*, No. 1:10-cv-00651 (D.D.C.), No. 11-5256 (D.C. Cir.), petition cert. granted No. 12-96 (U.S. Sup. Ct.)**

Case Description: In April 2010, Shelby County, Alabama filed suit in federal court in Washington, DC to challenge Section 5 of the Voting Rights Act, arguing that Congress did not have the constitutional authority in 2006 to reauthorize Section 5 for another 25 years.

On September 21, 2011, the U.S. District Court for the District of Columbia upheld the constitutionality of Section 5, and on May 18, 2012, the D.C. Circuit affirmed this decision.

Case Status: On November 9, 2012, the Supreme Court granted *certiorari*, limited to the following question: "Whether Congress's decision in 2006 to reauthorize Section 5 of the Voting Rights Act under the pre-existing coverage formula of Section 4(b) of the Voting Rights Act exceeded its authority under the Fourteenth and Fifteenth Amendments and thus violated the Tenth Amendment and Article IV of the United States Constitution." Oral argument was heard by the Supreme Court on February 27.

CLC Position/Involvement: On February 1, 2013, the Campaign Legal Center (CLC) filed an *amici* brief in defense of Section 5 on behalf of several jurisdictions that have bailed out under the Act by demonstrating a record of non-discrimination.

[1] These contribution amounts were set for the 2011-12 election cycle, but will be indexed for inflation for the 2013-14 cycle.

***Texas v. U.S. and Holder*, No. 11-cv-1303 (TBG-RMC-BAH) (D.D.C. three-judge court), on appeal No. 12-496 (U.S. Sup. Ct.)**

Case Description: On July 19, 2011, Texas submitted its redistricting plans to the United States District Court for the District of Columbia for preclearance under Section 5 of the Voting Rights Act.[2] Various state elected officials, civil rights groups and voters intervened, highlighting that although over two-thirds of the population growth in Texas in the last decade was attributable to minorities, the number of districts in which minority voters could elect a candidate declined from eleven to ten under the proposed plan.

On November 8, 2011, the district court denied Texas's motion for summary judgment, declining to find that its plans fully met the standards of Section 5.

Case Status: On August 28, 2012, the three-judge court enjoined all three redistricting plans—for Texas' congressional delegation, its state House of Representatives and the state Senate. The court found that Texas has not met its burden to show that the U.S. Congressional and state House Plans would not have a retrogressive effect, or that the U.S. Congressional and state Senate Plans were not enacted with discriminatory purpose.

Texas filed its jurisdictional statement with the U.S. Supreme Court on October 19, 2012 seeking review of the lower court's decision. Intervenors-appellees filed their response on December 7, 2012.

CLC Involvement: The CLC's Executive Director, J. Gerald Hebert, represents state senator Wendy Davis and several Texas voters as defendants-intervenors in the litigation.

Related: *Perry v. Perez*, 11-cv-00360-OLG-JES-XR (W.D. Tex.), Nos. 11–713, 11–714 and 11–715 (U.S. Sup. Ct.)

Case Description: Various voters, elected officials and civil rights groups filed suit in the U.S. District Court for the Western District of Texas, claiming that Texas's redistricting plans for Congress, the state house and state senate violate the Constitution and Section 2 of the Voting Rights Act. The court heard argument and held a trial with respect to the plaintiffs' claims, but withheld judgment pending resolution of *Texas v. U.S. and Holder*. As it became increasingly unlikely that the D.C. district court would preclear the state's plans in time for the 2012 primary elections, the district court drafted interim plans. The state appealed to the U.S. Supreme Court.

Case Status: On January 20, 2012, the Supreme Court vacated the district court's order implementing the interim map, instructing the court that instead of drafting a plan from scratch, it should have taken guidance from the state's plan and made adjustments only as needed where the plan violated the VRA or the Constitution. Thereafter, the three-judge

[2] Texas is among the jurisdictions that must have changes to their voting laws cleared by either the Justice Department or a three-judge district court in D.C. under Section 5.

district court imposed interim plans for Congress, state house and state senate that would govern the 2012 elections. In an order issued February 11, 2013, the district court indicated that it would defer action on the development of permanent remedial maps until after the Supreme Court resolves all pending Section 5 matters.

CLC Involvement: The CLC's Executive Director, J. Gerald Hebert, represents state senator Wendy Davis and several Texas voters as plaintiffs in this action challenging the Congressional and state senate plans.

b. Past cases/ orders

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

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

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

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

Case Status: Plaintiffs appealed the district court's October 2011 decision dismissing their as-applied challenge to the Ninth Circuit Court of Appeals. On October 23, 2012, the Ninth Circuit dismissed the appeal, finding that the release of petitions following the lower court's decision rendered moot plaintiffs' as-applied claim.

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

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

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

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

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

On January 31, 2012, the Court of Appeals affirmed the lower court decision, upholding all of the challenged provisions. On February 22, 2012, the Court of Appeals denied plaintiffs-appellants' motion for a rehearing *en banc*. On May 22, 2012, plaintiffs filed a petition for *certiorari* (No. 11-1426), which was denied on October 1, 2012.

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

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

CLC Position/Involvement: The CLC tracked this case.

***The Real Truth About Obama, Inc. v. FEC*, No. 08-cv-00483 (E.D. Va.), on appeal *The Real Truth About Abortion v. FEC*, No. 11-1760 (4th Cir.), No. 12-311 (U.S. Sup. Ct.)**

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

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

Upon remand to the district court, only two FEC rules remained at issue due to intervening litigation: 11 C.F.R. § 100.22(b) (defining "express advocacy") and the FEC's policy for determining a group's "major purpose." Both effectuate only disclosure requirements. On June 16, 2011, the district court granted summary judgment to the FEC, finding that the regulation and policy were constitutional. Plaintiffs filed a notice of appeal on July 15, 2011.

Case Status: On June 12, 2012, the Fourth Circuit Court of Appeals affirmed the district court, upholding both Section 100.22(b) the FEC's "major purpose" policy. On September 10, 2012, plaintiffs filed a petition for *certiorari*, which the Supreme Court denied on January 7, 2013.

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

***U.S. v. Danielczyk*, No. 11-cr-00085 (E.D. Va.), No. 11-4667 (4th Cir.), No. 12-579**

Case Description: This case is a criminal matter concerning a number of alleged campaign finance violations, including that the defendants illegally directed corporate contributions to Hillary Clinton's 2008 Presidential campaign. On May 26, 2011, the district court dismissed the count in the indictment concerning illegal corporate contributions on grounds that the Supreme Court's decision in *Citizens United* rendered the federal restriction on corporate contributions unconstitutional. The district court then requested additional briefing on the applicability of *FEC v. Beaumont*, a Supreme Court ruling upholding the corporate contribution restriction that the district court had failed to consider. On June 7, 2011, the lower court reaffirmed its May 26 decision to strike down the federal restriction.

On June 28, 2012, the Fourth Circuit Court of Appeals reversed the district court and reaffirmed that the federal restriction on corporate contributions was constitutional.

Case Status: On November 8, 2012, the defendants filed a petition for *certiorari*. On February 25, 2013, the U.S. Supreme Court declined to grant *cert*.

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

2. FEDERAL CAMPAIGN FINANCE LAW LITIGATION

Free Speech v. FEC, 2:12-cv-00127-SWS (D. Wyo.), No. 12-8078 (10th Cir.) (dismissed), on appeal No. 13-8033 (10th Cir.)

Case Description: On June 14, 2012, Free Speech (FS) brought suit in the U.S. District Court for the District of Wyoming after receiving an FEC advisory opinion wherein the Commissioners found that certain of FS's proposed ads constituted "express advocacy" and deadlocked on the status of other ads. In the suit, FS challenges the constitutionality of the FEC's definition of "express advocacy" and its policy for judging a group's "major purpose" – both important to the determination of whether a group constitutes a political committee.

On July 13, 2012, FS filed a motion for preliminary injunction. On October 3, 2012, the district court denied plaintiff's motion, finding that it was unlikely to succeed on the merits of its claims.

Case Status: FS appealed to the Tenth Circuit Court of Appeals on October 19, 2012. While this appeal was pending, the district court decided the case on the merits, granting the FEC's motion to dismiss on March 19, 2013. FS appealed this final judgment on March 20, and then voluntarily dismissed its earlier appeal of the district court's denial of preliminary relief. Upon request of the parties, the Court of Appeals transferred the briefs and other materials on file in the preliminary injunction appeal (No. 12-8078) to the 2013 appeal (No. 13-8033).

Oral argument is scheduled for May 7, 2013.

CLC Position/Involvement: On February 11, 2013, the CLC, along with D21, filed an *amici* brief with the Tenth Circuit to defend the federal disclosure regulations applicable to independent spending. The CLC and D21 previously filed an *amici* brief with the district court in August 2012.

***Hispanic Leadership Fund v. FEC*, 12-cv-00893 (E.D. Va.)**

Case Description: On August 10, 2012, the Hispanic Leadership Fund (HLF) filed suit to challenge the application of the "electioneering communication" disclosure requirements to its proposed television advertisements criticizing President Obama. "Electioneering communication" disclosure requirements apply to broadcast ads that refer to a clearly identified candidate run in close proximity to an election. HLF argued that its proposed ads would not refer to a clearly identified candidate because they would not mention President Obama by name and instead would use the terms "the White House" and "the Administration" or audio recordings of the President's voice.

Case Status: HLF moved for a preliminary injunction on August 10, 2012. The district court consolidated the hearing on the injunction with trial on the merits, and on October 5, 2012, entered a declaratory judgment in part for the FEC, in part for HLF: it found that the ads using the terms "the White House" and "the Administration" were "electioneering communications" permissibly subject to disclosure, and the ads using only recordings of the President's voice were not.

CLC Position/Involvement: On August 29, 2012, the CLC submitted an *amicus* brief to the U.S. District Court for the Eastern District of Virginia, opposing HLF's attempt to evade campaign finance disclosure.

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

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

Case Status: Plaintiffs filed an amended complaint in the district court on May 21, 2010. On June 3, 2010, the district court stayed the proceedings pending the resolution of a different case, *Real Truth About Obama v. FEC*. Following the Supreme Court's decision to deny *certiorari* in *Real Truth*, the parties have requested that the stay remain in place while the parties attempt to settle the case.

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

***Libertarian National Committee (LNC) v.* FEC, 11-cv-00562 (D.D.C.), on appeal No. 13-5088 (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).

Case Status: On September 28, 2012, the district court declined to certify the constitution questions as formulated by plaintiff, finding that a facial challenge to the contribution limits was precluded by Supreme Court precedent, and that plaintiff's attempt to bring an as-applied challenge to the application of the contribution limits to all bequests to all political parties was improper. The court, however, amended the constitutional question and certified the following, "Does imposing annual contribution limits against the bequest of Raymond Groves Burrington violate the First Amendment rights of the Libertarian National Committee?"

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

Van Hollen v. FEC, No. 11-cv-00766 (D.D.C.), No. 12-5118 (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 its 2007 regulation improperly narrowed the scope of federal disclosure requirements connected to electioneering communications.[3] Plaintiff challenged the regulation under the Administrative Procedures Act, alleging that it is arbitrary, capricious and contrary to the federal campaign finance statute it purports to implement.

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.

Case Status: 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 plaintiffs' *Chevron* step two argument.

On October 5, one of the defendant-intervenors filed a petition of rulemaking to amend the challenged rule with respect to a minor issue not relevant to the outcome of the lawsuit. In response, the court stayed the case on October 18, 2012. The FEC decided against such a rulemaking, and on March 12 the court lifted the stay. The parties are currently filing supplemental briefs on the *Chevron II* issue, with all briefing be completed by May 13.

CLC Position/Involvement: The CLC and D21 are part of Van Hollen's *pro bono* legal team, led by Roger Witten of the law firm WilmerHale.

[3] 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, 2 U.S.C. § 441c, 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.

Case Status: On April 16, 2012, the court denied plaintiff's motion for a preliminary injunction. On November 5, 2012, the court granted summary judgment in favor of the FEC.

Plaintiffs' appeal was docketed with the D.C. Circuit Court of Appeals on November 19, 2012, and was fully briefed as of March 2013.

CLC Position/Involvement: On February 27, 2013, the CLC, joined by D21 and Public Citizen, filed an *amici* brief with the D.C. Circuit. On August 23, 2012, the CLC, with D21, filed an *amici* brief with the district court in support of the FEC's motion for summary judgment.

3. STATE/MUNICIPAL LAW LITIGATION

a. Voting Rights Cases

***Arcia v. Detzner*, No. 1:12-cv-22282-WJZ (S.D. Fla.), on appeal *Arcia v. Fla. Sec'y of State*, No. 12-15738 (11th Cir.)(Florida purge case)**

Case Description: In April 2012, Florida initiated a voter purge program, sending to state Supervisors of Elections ("SOEs") a list containing approximately 2,625 names of alleged "potential non-citizens." On June 19, 2012, several public interest groups challenged Florida's voter purge program under Section 2 of the Voting Rights Act (VRA), which prohibits such activities that have a discriminatory impact; and Sections 8(b)(1) and 8(c)(2)(A) of the National Voter Registration Act (NVRA), which prohibit list maintenance programs within 90 days of a federal election.

On September 12, 2012, the parties filed a joint stipulation limiting the claims in the case to the NVRA claim. The stipulation required the SOEs to reinstate any voters who were improperly removed from the rolls, and to inform the more than 2,600 citizens who were sent purge letters that they remain registered and could vote in November.

Plaintiffs filed an amended complaint on September 12, 2012, alleging that the Secretary of State had resumed efforts to identify noncitizens on the voter rolls after receiving access to the Department of Homeland Security's Systematic Alien Verification for Entitlements database, in violation of § 8(c)(2)(A) of the NVRA. On September 19, 2012, plaintiffs filed their motion for preliminary injunction and summary judgment.

Case Status: On October 4, 2012, the district court denied plaintiffs' motion for preliminary injunction and summary judgment, finding that the NVRA's 90-day purge prohibition applies only to registrants who become ineligible based on a change in residence, and does not extend to other systematic voter removal programs within 90 days of a federal election. Plaintiffs filed their notice of appeal on November 1, 2011. Appellants' opening brief was filed on December 17, 2012, and the appeal was fully briefed by March 2013.

CLC Involvement: CLC is tracking this lawsuit.

LULAC v. Harris County, No. 4:12-cv-03035 (S.D. Tex.)

Case Description: On October 11, 2012, plaintiffs League of United Latin American Citizens (LULAC) and Harris County voters filed suit in the U.S. District Court for the Southern District of Texas, alleging that Harris County's administration of its voter registration process resulted in the wrongful rejection or removal of eligible voters, including plaintiffs, in violation of Sections 2, 5, 11(b) and 12(d) of the Voting Rights Act (VRA); Section 8(b)(1) of the National Voter Registration Act; and the First and Fourteenth Amendments to the U.S. Constitution. Campaign Legal Center attorneys serve as co-counsel for the plaintiffs in this lawsuit.

Plaintiffs claim that Harris County wrongfully rejected voter registration applications at a substantially higher rate than any other Texas county, thus depriving eligible voters of their First Amendment right to vote, and that Harris County rejects a disproportionate number of applications from minority applicants in violation of Section 2 of the VRA. Plaintiffs also allege that Harris County failed to follow the terms of a 2009 settlement agreement relating to voter registration procedures reached in *Texas Democratic Party v. Vasquez*, No. 08-3332 (S.D. Tex.), arguing that because the agreement was pre-cleared, failure to follow its procedures constitutes a change in voting subject to Section 5 preclearance requirements.

Case Status: Defendants filed their answer to plaintiff's complaint on December 18, 2012. Discovery is underway, with trial currently scheduled for February 2014.

CLC Involvement: As noted above, CLC attorneys serve as co-counsel for the plaintiffs.

South Carolina v. U.S. and Holder, No. 1:12-cv-00203-CKK-BMK-JDB

Case Description: South Carolina enacted a voter photo identification law in May 2011 that requires voters to present one of five forms of state-issued photo identification, but allows voters to vote a provisional ballot if they appear at the polls without ID and attest that "a reasonable impediment" prevents them from obtaining ID. In December 2011, the U.S. DOJ refused to preclear the law under Section 5 of the Voting Rights Act, finding that voters without the required forms of ID are 20 percent more likely to be African-American. In February 28, 2012, South Carolina filed suit in the U.S. District Court of the District of Columbia requesting judicial preclearance of its voter ID law.

Case Status: On October 10, 2012, a three-judge panel ruled that there was not enough time to implement the voter ID law before the 2012 general election. The court granted preclearance with respect to future elections, but based its decision on South Carolina's broad articulation of the law's "reasonable impediment" provision; any alterations or attempts to narrow that provision would still require preclearance.

CLC Involvement: The CLC served as co-counsel with the ACLU for a group of intervenors who will be harmed if the voter ID law is allowed to take effect.

b. Disclosure Cases

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

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

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

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

Case Status: Plaintiffs appealed to the Seventh Circuit Court of Appeals. On September 10, 2012, the Seventh Circuit affirmed the district court's decision, upholding the state disclosure law. Plaintiffs' petition for rehearing *en banc* was denied by the Seventh Circuit on November 6, 2012.

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

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

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

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

Case Status: Both defendants and plaintiffs appealed the district court decision to the Fourth Circuit Court of Appeals. On January 18, 2013, the Fourth Circuit affirmed in part and reversed in part the district court decision, but in so holding, sustained almost all the challenged provisions in West Virginia's campaign finance law. In particular, the Court of Appeals found that the state's broad definition of "express advocacy" was constitutional, and reversed the district court's decision to narrow the disclosure connected to electioneering communications to only donations earmarked for electioneering communications.

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

Lair v. Murray, No. 12-cv-0012 (D. Mont.), on appeal Nos. 12-35484, 12-35538, 12-35809, 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. An aggregate contribution limit applicable to contributions from state political parties to candidates; and
5. A prohibition on corporate contributions to a candidate or corporate independent expenditures on behalf of a candidate.

On February 24, 2012, the district court preliminarily enjoined the provisions governing the discussion of candidates' voting records in campaign materials, *i.e.*, the voting reporting requirement and the political civil libel provision. The court, however, denied preliminary relief as to all other claims, although it noted that (a) the challenge to the corporate expenditure prohibition was moot because the prohibition had been enjoined in the *American Tradition Partnership* litigation, and (b) the plaintiffs could potentially marshal evidence showing that the contribution limits prevented candidates from "amassing the resources necessary for effective [campaign] advocacy" 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, an issue not reached in the preliminary injunction proceedings.

Case Status: 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, however, the court struck down Montana's contribution limits on grounds that they prevent candidates from "amassing the resources necessary for effective campaign advocacy."

On October 16, 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).

On February 22, 2013, the Ninth Circuit granted the parties' joint motion to stay appellate proceedings until June 26, 2013. On or before the expiration of the stay, appellants must file either their opening brief or a status report and a motion for appropriate relief.

CLC Position/Involvement: The CLC intends to file an *amicus* brief in this case. CLC Senior Counsel Paul Ryan submitted written testimony as an expert witness to the district court in May 2012.

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

Case Description: On September 22, 2010, plaintiff filed suit to challenge a Florida statute that requires groups that are not registered as political committees to register and report if they make over $5,000 of electioneering communications in a calendar year. Plaintiff argued that the state definition of "electioneering communication" is vague because it includes the "appeal to vote" test devised by the U.S. Supreme Court in *Wisconsin Right to Life v. FEC*, and that the disclosure requirements are overbroad insofar as they apply to "non-major-purpose" groups.

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

Case Status: On September 2, 2011, plaintiffs appealed. On May 17, 2012, the Eleventh Circuit Court of Appeals affirmed the lower court decision and upheld the disclosure law. On August 10, 2012, the Court of Appeals denied NOM's motion for an *en banc* rehearing.

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

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

Case Description: In January 2009, plaintiffs brought a challenge in the U.S. District Court for the Eastern District of California to a California law requiring ballot measure committees to disclose their contributors of $100 or more. Specifically, plaintiffs sought an as-applied

"blanket exemption" from California's disclosure provisions, claiming that compelled disclosure of their contributors would result in threats, harassment, and reprisals against supporters of Proposition 8, a ballot measure pertaining to same-sex marriage. Additionally, plaintiffs contended that the law's $100 threshold for the disclosure of contributors is not narrowly tailored.

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

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

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

c. Contribution Limit Cases

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' state contribution limits. Specifically, ILP challenged the $50,000 limit on contributions from PACs to state candidates and the $5,000 limit on contributions from individuals to candidates, arguing that the law authorizes political parties to make far larger contributions and therefore discriminates against non-party political speakers in favor of political parties.

Case Status: ILP moved for a preliminary injunction on August 30, 2012. On October 5, 2012, the court denied plaintiffs' 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.

CLC Position/ Interest: On September 18, 2012 the CLC filed an *amici* brief defending the state contribution limits with the Illinois Coalition for Political Reform and Chicago Appleseed.

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

Case Description: On July 7, 2010, Minnesota Concerned Citizens for Life (MCCL) challenged multiple provisions of Minnesota's campaign finance law, including:

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

On September 20, 2010, the district court denied plaintiffs' motion for a preliminary injunction, and plaintiffs appealed to the Eighth Circuit Court of Appeals. On May 16, 2011, a three-judge panel of the Eighth Circuit affirmed that MCCL was unlikely to prevail in its challenge to Minnesota's independent expenditures disclosure requirements and the state restriction on corporate contributions.

On July 12, 2011, the Court of Appeals granted the plaintiffs' petition for an *en banc* rehearing of the May 2011 decision. On September 5, 2012, the Court unanimously held that the challenge to the State of Minnesota's corporate contribution restriction was unlikely to succeed, but in a split decision, struck down the continuous reporting requirement of the "political fund" disclosure law.

Case Status: On February 11, 2013, the district court entered a permanent injunction enjoining the state from applying Minn. Stat. § 10A.20, subd. 7, to political funds, *i.e.*, the requirement that groups file regular reports even in periods where no political activity has occurred. The court dismissed the remainder of the case.

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

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

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

(1) New York's pay-to-play law that subjects persons doing business with the city and lobbyists to lower contribution limits and provides that their contributions are not "matched" with public funds;

(2) A 2007 expansion of New York's ban on corporate contributions to also prohibit contributions from partnerships, LLCs and LLPs; and

(3) The trigger provisions of the public financing program that provide publicly-financed candidates with a greater "match" of public funds and an increase in their voluntary spending limits if they face a high-spending non-participating opponent.

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

On April 24, 2008, plaintiffs moved for a preliminary injunction on their First and Fourteenth Amendment claims against the play-to-play provisions and the expanded corporate contribution prohibition (but did not address the trigger provisions or VRA claims). On February 6, 2009, the district court denied 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) on March 19, 2012, but the U.S. Supreme Court denied *cert* on June 25, 2012.

Case Status: The parties filed cross-motions for summary judgment in March and June 2012 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.

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

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

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

1. The $5,000 limit on contributions to political committees, including political parties;
2. The $5,000 limit on contributions from political committees to other political committees or candidates, including contributions from party committees to other party committees; and
3. The restriction on committees' solicitation or acceptance of contributions greater than $5,000.

On January 5, 2012, the district court preliminarily enjoined the contribution limit as applied to independent expenditure committees but denied the motion for preliminary injunction as to the remaining claims.

Case Status: The state defendants appealed the decision to the Tenth Circuit Court of Appeals on February 2, 2012. The appeal is fully briefed, and oral argument was held on November 7, 2012.

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

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

Case Description: The Texas Democratic Party filed an action seeking damages and injunctive relief in connection to several violations of state campaign finance law allegedly committed by the King Street Patriots (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 supreme 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). The appeal is fully briefed, and oral argument was heard on December 19, 2012.

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.

Vermont Right to Life Committee, Inc. v. Sorrell, 09-cv-00188 (D. Vt.), on appeal No. 12-2904 (2d Cir.)

Case Description: In August 2009, Vermont Right to Life Committee (VRTL) filed a complaint challenging several aspects of Vermont's campaign finance law, arguing that the law violates the First Amendment by regulating VRTL as a political committee, requiring disclaimers on electioneering communications, and requiring the reporting of "mass-media activities."

Plaintiffs filed an amended complaint on July 19, 2010, which also challenged the state contribution limits as applied to 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 VRTL'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. Oral argument was heard on March 15, 2013.

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

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

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

1. The statutory definitions of "political committee" 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 on 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 March 2011 decision to the Ninth Circuit Court of Appeals. The appeal was fully briefed by November 2012.

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.

Wisconsin Right to Life v. Vocke, No. 10-CV-0669 (E.D. Wis.), on appeal No. 12-3046 (7th Cir.)

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

1. The definition of "political committee";
2. The disclosure requirements applicable to "independent expenditure organizations";
3. The 24-hour reporting requirement;
4. A requirement that a committee file an oath attesting that its independent disbursements are independent;
5. The $20 and $100 reporting thresholds;
6. The $10,000 cap on the aggregate annual amount individuals may contribute to candidates, political parties and political committees as applied to political committees making only independent expenditures (IECs);

7. The $10,000 contribution limit as applied to WRTL's contributions to its PAC, WRTL-SPAC; and
8. The attribution and disclaimer requirements.

On June 24, 2011, plaintiffs moved to lift the stay placed on the case pending resolution of a parallel state court case in connection to one claim in their complaint, *i.e.*, their challenge to the contribution limits as applied to IECs. On July 12, 2011, the court denied the motion, and plaintiffs appealed to the Seventh Circuit Court of Appeals. On December 12, 2011, the Court of Appeals heard their claim and struck down the $10,000 limit as applied to IECs.

On April 18, 2012, the district court lifted the stay after the state Supreme Court dismissed the parallel state case. On April 18, 2012, plaintiffs filed an amended complaint and motion for temporary restraining order and preliminary injunction. The amended complaint dropped plaintiffs' claims pertaining to the $20 and $100 reporting thresholds and added a claim challenging the constitutionality of Wisconsin's corporate expenditure restriction.

Case Status: On August 31, 2012, the district court granted plaintiffs' motion for summary judgment in part, holding that:

1. The corporate expenditure ban was unconstitutional facially and as-applied to plaintiffs;
2. The attribution disclaimer requirements were unconstitutional with respect to ads that are less than 30 seconds in length.

The district court granted summary judgment to the state on all remaining claims. Plaintiffs appealed the summary judgment decision on September 9, 2012. Oral argument was heard on January 18, 2013. Supplemental briefing occurred in February and March of 2013.

CLC Position/Involvement: The CLC filed an *amicus* brief with the Seventh Circuit on November 9, 2012, defending Wisconsin's disclosure law.