COURT CASES OF INTEREST

October 2012

1. U.S. SUPREME COURT

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

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

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

Case Status: On June 25, 2012, the U.S. Supreme Court granted *certiorari*, and summarily reversed the Montana Supreme Court's order upholding the state's corporate expenditure restriction.

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

2. FEDERAL CAMPAIGN FINANCE LAW LITIGATION

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

Case Description: On October 19, 2010, plaintiffs filed suit in the U.S. District Court for the District of Columbia to challenge the federal restriction on contributions and expenditures by foreign nationals in connection with local, state or federal elections, *see* 2 U.S.C. § 441e, as applied to foreigners legally living and working in the U.S. On August 8, 2011, a three-judge court granted the FEC's motion to dismiss, holding that Congress had a compelling interest in restricting contributions and expenditures made by temporary residents.

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

CLC Position/Involvement: The CLC tracked this case.

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

Case Description: 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 U.S. Supreme Court's decision in *Citizens United* rendered the federal restriction on corporate contributions unconstitutional. The district court, however, failed to cite *FEC v. Beaumont*, the 2003 Supreme Court ruling that had upheld that same federal restriction.

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

Case Status: On June 28, 2012, the Fourth Circuit Court of Appeals reversed the district court and reaffirmed that the federal restriction on corporate contributions was constitutional. On August 10, the Court of Appeals denied defendants' motion to rehear the case.

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

Free Speech v. FEC, 2:12-cv-00127-SWS (D. Wyo.)

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.

Case Status: 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.

CLC Position/Involvement: On August 10, 2012, the CLC and D21 filed an *amici* brief urging the court to deny FS's preliminary injunction.

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 argues that its proposed ads do 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 preliminary injunction on August 10, 2012. On October 5, 2012, the district court in part granted, and in part denied the motion, finding 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.

James v. FEC, No. 12-cv-1451 (D.D.C)

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 argues that she wishes 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.

Case Status: On September 19, 2012, the court stayed the proceedings pending a decision in *McCutcheon v. FEC*.

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

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

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

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

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

McCutcheon v. FEC, 12-cv-01034-JEB-JRB-RLW (D.D.C.) (three-judge court)

Case Description: The RNC and 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.

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

CLC Position/Involvement: The CLC and Democracy 21 filed an *amici* brief in support of the FEC on July 10, 2012, urging the Court to uphold aggregate contribution limits as necessary to prevent donors from circumventing the individual contribution limits.

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.)

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 judgment of the Fourth Circuit, remanding the case for further consideration in light of *Citizens United* and "the Solicitor General's suggestion of mootness."

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

Case Status: Plaintiffs filed a notice of appeal on July 15, 2011. 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*.

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

Van Hollen v. FEC, No. 11-cv-00766 (D.D.C.), on appeal No. 12-5118 (D.C. Cir.)

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

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.

Case Status: On April 26, 2012, the FEC announced that it would not appeal the district court decision. However, the 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 plaintiffs' *Chevron* step two argument, and also granted the FEC the option of initiating a rulemaking proceeding to amend the challenged rule before further proceedings. On October 4, 2012, the FEC filed a status report stating that it will not pursue a new rulemaking and will continue to defend the 2007 regulation.

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

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

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

Case Description: On October 19, 2011, plaintiffs filed a complaint with the U.S. District Court for the District of Columbia to challenge the constitutionality of the federal 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 preliminary injunction. The plaintiffs and defendants both filed motions for summary judgment on July 12, 2012 and August 15, 2012, respectively, and the motion is now fully briefed.

CLC Position/Involvement: On August 23, 2012, the CLC, with D21, filed an *amici* brief to defend the constitutionality of the government contractor ban.

3. STATE/MUNICIPAL LAW LITIGATION

a. Voting Rights Cases

***Arcia v. Detzner*, No. 1:12-cv-22282-WJZ (S.D. Fla.) (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, Advancement Project, Fair Elections Legal Network, Project Vote, SEIU Local 1199 and LatinoJustice PRLDEF filed suit to challenge Florida's voter purge program under: § 2 of the Voting Rights Act (VRA), 42 U.S.C. § 1973, which prohibits such activities that have a discriminatory impact; and §§ 8(b)(1) and 8(c)(2)(A) of the National Voter Registration Act (NVRA), 42 U.S.C. § 1973gg-6(c)(2)(A), 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 90-day claim. The stipulation requires 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 may vote in November.

Plaintiffs filed an amended complaint on September 12, 2012, alleging that the Secretary of State 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.

CLC Involvement: CLC is closely tracking this lawsuit.

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,[2] 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: Trial was conducted from August 27-31, 2012, and the parties are awaiting a decision.

CLC Involvement: The Legal Center serves 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.

Texas v. U.S. and Holder, No. 11-cv-1303 (TBG-RMC-BAH) (D.D.C. three-judge court)

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.[3] 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 the 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 the state 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.

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[2] South Carolina and Texas are among the states 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.

[3] *See supra* note 2.

Congressional and state Senate Plans were not enacted with discriminatory purpose. Texas has filed a Notice of Appeal to the U.S. Supreme Court.

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 take guidance from the state's plan and make adjustments as needed where the plan violates the VRA or the Constitution. Thereafter, the three-judge district court imposed interim plans for Congress, state house and state senate that would govern the 2012 elections.

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. Disclosure Cases

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

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.

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

Center for Individual Freedom v. Tennant, No. 1:08-cv-00190 (S.D.W. Vir.) (lead case), consolidated with *West Virginians for Life 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.

Case Status: Both defendants and plaintiffs have appealed the district court decision to the Fourth Circuit Court of Appeals. The appeal is now fully briefed and oral argument is set for October 23, 2012.

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

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

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

Plaintiffs petitioned for *certiorari*, and the 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 October 17 decision dismissing their as-applied challenge to the Ninth Circuit Court of Appeals. On November 28, 2011, the Supreme Court denied plaintiffs' request for an injunction pending appeal.

The appeal is fully briefed and oral argument was heard June 22, 2012.

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

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

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

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

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

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

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

Lair v. Murray, No. 12-cv-0012 (D. Mont.), on appeal Nos. 12-35484, 12-35538 (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 voting reporting requirement and the political civil libel provision, as well as the restriction on corporate contributions to independent expenditure committees, an issue not reached in the preliminary injunction proceedings.

Case Status: The state appealed the summary judgment decision on June 13, 2012, and plaintiffs filed a notice of cross-appeal on June 27, 2012; all parties voluntarily dismissed their appeals on July 20, 2012, however.

On June 20, 2012, the state moved for summary judgment on the *Randall*–style challenge to the contribution limits, but 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 prevent candidates from "amassing the resources necessary for effective campaign advocacy." The state has announced that it will seek an emergency stay of the district court's ruling pending its appeal to the Ninth Circuit.

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

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

Case Description: On September 21, 2010, the National Organization for Marriage (NOM) filed suit in the U.S. District Court for the District of Rhode Island to challenge several aspects of Rhode Island campaign finance law, including:
1. The state "political committee" definition and attendant political committee regulations;
2. The state restriction on corporate expenditures; and

3. The state definition of "independent expenditure" and the independent expenditure disclosure requirements.

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

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

The case returned to the district court, and on September 16, 2011, the district court stayed the proceedings until the resolution of any appeal to the U.S. Supreme Court in *NOM v. McKee*. On June 21, 2012, after the Supreme Court denied *certiorari* in *McKee*, plaintiffs voluntarily dismissed the case.

CLC Position/Involvement: The CLC tracked 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.)

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 has been tracking this case.

***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. No petition for *certiorari* has been filed to date.

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.

Vermont Right to Life Committee, Inc. v. Sorell, 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 itsconventional PAC with "nearly complete organizational identity," a "fluidity of funds," and overlapping governance.

Case Status: Plaintiffs appealed to the Second Circuit Court of Appeals on July 18, 2012. Their opening brief was filed August 30, 2012; the state's brief is due November 29, 2012.

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

c. Contribution Limit Cases

Alabama Democratic Conference v. Attorney General, State of AL, No. 11-cv-02449 (N.D. Ala.), on appeal No. 11-16040E (11th Cir.)

Case Description: On July 11, 2011, plaintiffs filed a complaint with the U.S. District Court for the Northern District of Alabama to challenge an Alabama law that prohibited contributions or transfers of funds between PACs, 527 organizations and private foundations insofar as the law prohibited transfers for the purpose of funding independent expenditures. Plaintiffs argued that pursuant to the reasoning of *Citizens United*, prohibiting transfers for the purpose of funding independent spending could not be justified by the governmental

interest in preventing corruption or the appearance of corruption. Plaintiffs also argued that the PAC-to-PAC transfer restriction violated Section 2 of the Voting Rights Act.

On December 14, 2011, the district court struck down the PAC-to-PAC transfer restriction as applied to ADC on First Amendment grounds, but dismissed plaintiffs' claim under the Voting Rights Act. The state appealed to the Eleventh Circuit Court of Appeals.

Case Status: The appeal was docketed on December 22, 2011, and was fully briefed as of May 2012. It is scheduled for oral argument in the week of January 7, 2013.

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

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

Case Description: On September 7, 2010, Iowa Right to Life (IRTL) filed suit to challenge several aspects of Iowa's campaign finance law, including:

1. The state definition for "political committee";
2. The state independent expenditure disclosure requirements;
3. The state restriction on corporate contributions; and
4. The state requirement that organizations obtain annual approval from their board of directors for independent expenditures.

On October 20, 2010, the district court denied IRTL's motion for a preliminary injunction. On June 29, 2011, the district court granted summary judgment in favor of the state on three of the four claims, upholding the state independent expenditure disclosure requirements and the corporate contribution restriction, and finding that the plaintiffs lacked standing to challenge the board approval requirement. The court, however, directed certain aspects of Count One of the complaint (definition of "political committee") to the state Supreme Court for further clarification of the law. On February 7, 2012, the state court returned its decision as to the certified question to the federal district court, and the district court entered summary judgment for the state on this claim.

Case Status: On March 12, 2012, IRTL filed its notice of appeal. IRTL's opening brief is due October 15, 2012.

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

Illinois Liberty PAC v. Madigan, No. 12-cv-05811 (E.D. Ill.)

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 challenges 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, and defendants filed their opposition on September 14, 2012. On October 5, 2012, the court denied plaintiffs' motion for preliminary relief, allowing the contribution limits to stand.

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. The brief makes clear that all of the limits challenged by ILP are considerably higher than corollary limits in federal and other states' laws that have been upheld by the U.S. Supreme Court.

Minnesota Concerned Citizens 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.

Case Status: On July 12, 2011, the Court of Appeals granted the plaintiffs' petition for an *en banc* rehearing of the May 16 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.

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: On March 16, 2012, plaintiffs filed for summary judgment in the district court on their remaining claims pertaining to the trigger provisions of the public financing program, specifically provisions that (1) raise/eliminate the expenditure limits for participating candidates facing high-spending non-participating opponents, and (2) authorize additional matching funds when a non-participating opponent is able to self-finance. (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.) Defendants filed for summary judgment on June 26, 2012.

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 is scheduled for 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), and the appeal is now fully briefed and listed as ready to be set for oral arguments.

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.

Thalheimer v. City of San Diego, 3:09-cv-02862 (S.D. Cal.), No. 10-55322 (9th Cir.) [CLOSED]

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

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

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

1. The prohibition on contributions from "non-individual entities" (including corporations) was constitutional except as applied to contributions from political parties;
2. The contribution limits were unconstitutional as applied to independent expenditure committees; and
3. The prohibition on candidates spending their own money prior to the 12-month period preceding the election was unconstitutional, but the parallel prohibition on making and accepting contributions in this period was constitutional.

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

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

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

1. The statutory definitions of "political committee" 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 issues. On March 21, 2011, the district court granted summary judgment to plaintiffs on their claim regarding independent expenditure committee contribution limits, and granted summary judgment to the state on all other claims.

Case Status: On April 19, 2012, plaintiffs appealed the March 21 decision to the Ninth Circuit Court of Appeals. Plaintiff-appellant's opening brief was filed July 30, 2012, and the state's response was filed on September 13, 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. Myse, 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 September 19, 2010, the court granted defendants' motion to stay the proceedings on abstention grounds pending the resolution of a state court case challenging Wisconsin's campaign finance law, *Wisconsin Prosperity Network, Inc. v. Myse*, 2010AP1937-OA (Wis. Sup. Ct.).[4] On June 24, 2011, plaintiffs moved to lift the stay as to one claim in their complaint, *i.e.*, their challenge to the contribution limits as applied to IECs. On July 12, 2011, the court denied the motion, and plaintiffs appealed to the Seventh Circuit Court of Appeals. On December 12, 2011, the Court of Appeals heard their claim and struck down the $10,000 limit as applied to IECs.

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

On April 18, 2012, plaintiffs filed an amended complaint and motion for temporary restraining order and preliminary injunction. The amended complaint drops plaintiffs' claims pertaining to the $20 and $100 reporting thresholds and adds a claim challenging the constitutionality of Wisconsin's corporate expenditure restriction at Wis. Stat. § 11.38.1.a.1.

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.

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

The district court granted summary judgment to the state on all remaining claims. Plaintiffs appealed the summary judgment decision on September 9, 2012. The district court denied plaintiffs' motion for an injunction pending appeal on September 19, 2012.

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