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## **Court Cases of Interest: Campaign Finance and Election Law**

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### **FEC Failure to Properly Implement BCRA**

#### ***Shays and Meehan v. FEC (Shays I)***

**Case description:** In October 2002, Reps. Christopher Shays (R-CT) and Marty Meehan (D-MA) filed a lawsuit in the D.C. federal district court against the Federal Election Commission (FEC), challenging 19 regulations adopted by the FEC to implement Bipartisan Campaign Reform Act of 2002 (BCRA).

**Status:** In September 2004, the District Court struck down 15 of the 19 contested regulations and ordered the FEC to rewrite the rules. The D.C. Circuit Court of Appeals affirmed the District Court decision. The FEC has since re-written the rules.

**CLC Position/Involvement:** The Campaign Legal Center (CLC) represented Senators John McCain (R-AZ) and Russell Feingold (D-WI) in the case as *amici curiae* (“friends of the court”), arguing that the contested FEC regulations undermined BCRA and its goal—to eliminate the soft money system.

#### ***Shays and Meehan v. FEC (Shays II)***

**Case description:** In September 2004, Reps. Shays and Meehan filed a lawsuit in the D.C. federal district court challenging the FEC’s failure to issue a rule regulating 527 groups.

**Status:** In March 2006, the district court found the FEC had failed to explain its decision not to issue rules requiring section 527 organizations spending money to influence federal elections to register as federal political committees, and ordered the FEC to either adequately explain its decision to regulate 527 organization on a case-by-case basis or to adopt a rule regulating 527 organizations. To date, the FEC has not complied with the court’s order. On September 13, 2006, Shays and Meehan filed a motion seeking to enforce the March order. The motion seeks an order directing the FEC within 30 days either to issue a rule regulating 527 groups or offer adequate explanation and justification for their failure to do so.

**CLC Position/Involvement:** CLC represented Senators McCain and Feingold in this case as *amici curiae*, arguing that the FEC’s refusal to issue a rule regulating 527 groups violates the Administrative Procedures Act.

#### ***Shays and Meehan v. FEC (Shays III)***

**Case description:** In July 2006, Reps. Shays and Meehan filed a third lawsuit in the D.C. federal district court challenging several new FEC regulations promulgated in response to the *Shays I* lawsuit.

**Status:** The case is pending before the federal district court.

**CLC Position/Involvement:** CLC supports Reps. Shays' and Meehan's challenge and believes the challenged regulations violate BCRA and the Administrative Procedures Act. CLC has not participated in the litigation to date.

### **BCRA Electioneering Communications**

#### ***Wisconsin Right to Life v. FEC***

**Case Description:** In July 2004, Wisconsin Right to Life (WRTL) filed a federal court constitutional challenge to BCRA's "electioneering communications" provisions as applied to certain ads the group characterized as "grassroots lobbying" ads. WRTL seeks an exemption from the law for its ads which it had plan to run in 2004.

**Status:** The D.C. federal district court ruled against WRTL, finding that the Supreme Court in *McConnell v. FEC* had foreclosed such "as applied" challenges to BCRA's "electioneering communications" provisions. Early in 2006, the Supreme Court reversed the district court decision, ruling simply that it had not foreclosed "as applied" challenges. The Supreme Court remanded the case to the district court for resolution of WRTL's specific "as applied" challenge. The case is pending before the federal district court.

**CLC Position/Involvement:** CLC is part of the legal team representing intervening defendants Reps. Tammy Baldwin (D-WI), Shays and Meehan, and Sen. McCain, arguing that the Constitution does not require an exemption for WRTL's ads, and that the ads are precisely the type of sham issue ads that Congress sought to regulate through passage of BCRA.

#### ***Christian Civic League of Maine v. FEC***

**Case Description:** In April 2006, Christian Civic League of Maine (CCLM) filed a D.C. federal district court constitutional challenge to BCRA's "electioneering communications" provisions as applied to a radio ad—a claim nearly identical to that made in *WRTL*.

**Status:** In May 2006, the district court denied CCLM's request to temporarily prohibit enforcement of the provision. CCLM appealed to the U.S. Supreme Court, which denied CCLM's motion to expedite review. CCLM's Supreme Court appeal is pending. Meanwhile, the three-judge district court has heard arguments on motions to dismiss and motions for summary judgment. A decision is expected soon.

**CLC Position/Involvement:** CLC is part of the legal team representing intervening defendants Sens. McCain and Feingold, and Reps. Shays, Meehan and Tom Allen (D-ME), arguing that the Constitution does not require an exemption for the CCLM ad, and that it is precisely the type of sham issue ad that Congress sought to regulate with BCRA.

#### ***Alaska Right to Life v. Miles***

**Case Description:** In November 2002, Alaska Right to Life Committee (AKRTL) filed a federal district court constitutional challenge to various provisions of Alaska's campaign finance laws, including its BCRA-like "electioneering communications" provisions.

**Status:** The district court ruled in favor of the state, upholding the laws as constitutional. AKRTL appealed to the Ninth Circuit Court of Appeals, which affirmed the district court decision in March 2006. AKRTL has asked the Supreme Court to review the case.

**CLC Position/Involvement:** CLC supports the Alaska law generally, but has not participated in the litigation to date.

## **Federal/State Campaign Contribution and Spending Limits**

### ***Randall v. Sorrell***

**Case description:** In 1999, the Vermont Republican State Committee and other plaintiffs filed a federal district court constitutional challenge to various provisions of Vermont state campaign finance law, including the state's contribution and expenditure limits.

**Status:** Earlier this year, the U.S. Supreme Court struck down Vermont's contribution and expenditure limits. With respect to the expenditure limits, the Court relied on its 1976 decision in *Buckley v. Valeo* striking down federal expenditure limits on First Amendment grounds. With respect to the contribution limits, the Court noted many differences between Vermont's limits and the federal and state contribution limits the Court has upheld against constitutional challenge. The Court found Vermont's limits to be much lower and more restrictive than the constitutionally permissible contribution limits at the federal level and in other states. Although the Court invalidated Vermont's contribution limits, the Court's decision did not affect federal limits and or the contribution limits in other states.

**CLC Position/Involvement:** CLC served as part of the legal team representing *amici curiae* Sens. McCain and Feingold, and Reps. Meehan and Shays, who urged the Supreme Court to uphold Vermont's contribution limits and to maintain the legal framework of *Buckley*.

### ***North Carolina Right to Life v. Leake***

**Case description:** In November 1999, North Carolina Right to Life (NCRL) filed a federal court constitutional challenge to various provisions of North Carolina campaign finance law, including a challenge to the state's \$4,000 limit on contributions to political committees, even committees that make only independent expenditures.

**Status:** The district court struck down the contribution limit and the state appealed to the Fourth Circuit. In a decision preceding the Supreme Court's 2003 *McConnell* decision, the Fourth Circuit affirmed the lower court decision. The state appealed to the U.S. Supreme Court, which considered the appeal after it had issued its opinion in *McConnell*. The Supreme Court vacated the Fourth Circuit decision and remanded the case for reconsideration in light of the *McConnell* decision. The Fourth Circuit, in turn, remanded the case to the district court, where the case is scheduled for oral argument in October 2006.

**CLC Position/Involvement:** CLC filed an *amicus curiae* brief in the case, arguing that the North Carolina law should be upheld and that the Supreme Court made clear in *McConnell* that contributions to committees making independent expenditures may be regulated to combat the appearance and reality of corruption.

## **Section "527" Groups**

***Shays and Meehan v. FEC (Shays II)*** See previous, under "FEC Failure to Properly Implement BCRA."

### ***Voters Education Committee (VEC) v. Washington State Public Disclosure Commission***

**Case description:** In September 2004, the WA State Public Disclosure Commission (PDC) filed an enforcement action in a Washington State court against a 527 group, Voter Education Committee (VEC), for the organization's failure to register as a state political committee and comply with state disclosure requirements. VEC filed a counter-suit challenging the state disclosure laws and claiming the state may only regulate "express advocacy," not "issue advocacy."

**Status:** In August 2005, a state superior court ruled in favor of the State, holding that the Supreme Court, in its *McConnell* decision, found the “express advocacy” standard to be “functionally meaningless” and not required by the U.S. Constitution. The court ruled that the VEC ad triggered “political committee” registration and reporting requirements. VEC appealed, and the case is pending before the State Supreme Court.

**CLC Position/Involvement:** CLC filed an *amicus curiae* brief in the case, arguing that by registering with the IRS as a Section 527 political organization, VEC established that its major purpose is influencing candidate elections and that it meets the state law definition of “political committee.”

### ***EMILY’s List v. FEC***

**Case description:** In January 2005, EMILY’s List filed a federal court challenge to an FEC regulation requiring organizations with both a federal political committees and an affiliated 527 organization to use federal hard money to pay at least 50 percent of its costs related to both federal and non-federal elections (*e.g.*, administrative expenses).

**Status:** In February 2005, the D.C. district court denied the EMILY’s List request for a preliminary injunction. EMILY’s List appealed and the D.C. Circuit Court affirmed the lower court decision. The case remains pending before the district court.

**CLC Position/Involvement:** CLC, along with others, filed an *amicus* brief defending the FEC allocation rule.

### ***FEC v. Club for Growth***

**Case description:** In September 2006, the FEC filed suit against Club for Growth (CFG) in the D.C. federal district court, alleging CFG had failed to register as a political committee despite spending millions of dollars to influence the 2000, 2002, and 2004 federal elections.

**Status:** CFG sought dismissal of the case, arguing that the FEC violated administrative procedural rules in bringing the case. The district court denied CFG’s motion to dismiss. CFG has appealed the district court’s denial of its motion to dismiss.

**CLC Position/Involvement:** CLC has been monitoring this litigation but has not participated in the litigation to date.

## **“Clean Elections”—Public Financing**

### ***ACLU of Connecticut v. Garfield***

**Case description:** In July 2006, the American Civil Liberties Union (ACLU) and other plaintiffs filed a federal court constitutional challenge to Connecticut’s “Clean Elections” public funding law. ACLU’s primary claims involve challenges to: the law’s differential treatment of major and minor parties; the additional public funds distributed to participating candidates in response to large independent expenditures and non-participating candidate expenditures; and restrictions on lobbyist campaign finance activities.

**Status:** The case is currently before the federal district court in Connecticut.

**CLC Position/Involvement:** CLC is part of the legal team representing organizations and individuals who are considering intervention to defend the public funding law.

### ***Jackson v. Leake***

**Case description:** In August 2005, a federal court constitutional challenge was filed regarding various provisions of North Carolina’s public financing system for judicial elections.

**Status:** The district court recently issued an opinion granting, in part, and rejecting, in part, the state’s motion to dismiss the lawsuit. The lawsuit remains pending in district court.

**CLC Position/Involvement:** CLC supports the state's defense of its judicial public financing law, but has not participated in the litigation to date.

***Association of American Physicians and Surgeons v. Brewer***

**Case description:** In January 2004, the Association of American Physicians and Surgeons (AAPS) filed a federal court constitutional challenge to several aspects of Arizona's public campaign financing system, including the provision providing participating candidates with additional public funds in response to large independent expenditures and non-participating candidate expenditures.

**Status:** The district court rejected AAPS's claims and the AAPS appealed to the U.S. Court of Appeals for the Ninth Circuit, where the case is currently pending.

**CLC Position/Involvement:** CLC filed an *amicus* brief with the Ninth Circuit in support of the state's defense of the public financing laws.

**Other Federal & State Cases**

***California Pro-Life Council v. Randolph***

**Case description:** In August 2000, California Pro-Life Council (CPLC) filed a federal court constitutional challenge to California's campaign finance reporting and disclosure requirements applicable to groups advocating for or against state ballot measures.

**Status:** The district court rejected the CPLC's claims and upheld the challenged state law provisions. The case is now on appeal to the U.S. Court of Appeals for the Ninth Circuit.

**CLC Position/Involvement:** CLC filed an *amicus curiae* brief arguing that the challenged state laws are constitutional.

***United States v. Valdes***

**Case description:** In May 2001, an indictment was filed against D.C. Police Detective Nelson Valdes, who accepted cash as a reward for searching and providing information from databases accessible only to law enforcement personnel. This case involves the question of what constitutes an "official act" under the federal gratuities statute.

**Status:** Valdes was found guilty in federal district court of accepting illegal gratuities. On appeal, however, a three-judge panel of the D.C. Circuit Court of Appeals found that Valdes did not violate the federal gratuities statute because his action of selling information from a restricted database was not an "official act" within the meaning of the statute. The D.C. Circuit Court then granted the government's request for appellate review by the full court (*en banc* review). The case is scheduled for argument in late September 2006.

**CLC Position/Involvement:** CLC filed an *amicus* brief urging the *en banc* court to reject the three-judge panel's overly narrow interpretation of what constitutes an "official act."

***Colorado Right to Life Committee v. Davidson***

**Case Description:** In July 2003, Colorado Right to Life Committee (CRLC) filed a federal court constitutional challenge to several provisions of Colorado state campaign finance laws, including the state ban on corporate political expenditures.

**Status:** The district court upheld many of the challenged provisions, but held that the political expenditure ban does not apply to CRLC because the nonprofit corporation accepted only a *de minimis* amount of for-profit corporation funding. The case is on appeal to the U.S. Court of Appeals for the Tenth Circuit.

**CLC Position/Involvement:** CLC is monitoring this litigation and supports the state's efforts to enforce its campaign finance law but has not participated in this litigation to date.