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Court Cases of Interest

U.S. SUPREME COURT

***Cao (RNC) v. FEC*, No. 10-30146 (5th Cir.), cert. petition No. 10-776 (U.S. Sup. Ct.) [CLOSED]**

Case Description: On November 13, 2008, the RNC filed a challenge in the U.S. District Court for the District of Louisiana to the federal limits on coordinated spending between political parties and their candidates for federal office. The district court granted in part plaintiffs' motion to certify constitutional questions to the Fifth Circuit Court of Appeals. On September 10, 2010, the *en banc* Fifth Circuit rejected all of plaintiffs' claims, and upheld the party coordinated spending limits.

Case Status: Plaintiffs filed a petition for *certiorari* on December 8, 2010. **On March 21, 2011, the Supreme Court denied *certiorari***, allowing the Fifth Circuit decision affirming the coordinated spending limits to stand.

CLC Position/Involvement: The CLC and D21 filed an *amicus* brief on April 19, 2010 with the *en banc* Fifth Circuit Court of Appeals to defend the constitutionality of the party coordinated spending limits.

***Green Party of Connecticut v. Lenge*, Nos. 09-0599, 09-0609 (2d Cir.), cert. petition No. 10-795 (U.S. Sup. Ct.) [CLOSED]**

Case Description: This case challenged the constitutionality of Connecticut's public financing system and its statutory ban on contributions from lobbyists, state contractors and members of their immediate families and their solicitation of contributions. On December 19, 2008, the court upheld Connecticut's ban on "pay-to-play" campaign contributions from lobbyists and state contractors. In a later decision, the district court struck down elements of Connecticut's public financing program, holding that the program's eligibility and qualification requirements discriminated against minor party candidates, and that the program's "triggered matching funds provisions" violated the First Amendment.

On July 13, 2010, the Second Circuit Court of Appeals reversed in part and affirmed in part the district court decision. It upheld the ban on state contractor contributions, but found the ban on lobbyist contributions unconstitutionally overbroad. The Second Circuit also held that the public financing program's "trigger provisions" were unconstitutional, but upheld the program's eligibility and qualification requirements for minor party candidates.

Case Status: In August 2010, the Connecticut state legislature amended its campaign finance law to eliminate its trigger provisions in response to the Second Circuit decision.

On December 9, 2010, plaintiffs filed a petition for *certiorari* requesting review of the Second Circuit's holding regarding the qualifying criteria of the public financing program. **On July 28, 2011, the Supreme Court denied *certiorari***, leaving undisturbed the decision of the Second Circuit to uphold the qualifying criteria.

CLC Position/Involvement: The CLC served as co-counsel to the defendant-intervenors in the Supreme Court.

McComish v. Bennett, No. 10-686 (U.S. Sup. Ct.)

Case Description: Plaintiffs challenged the “matching funds trigger provisions” of the Arizona Citizens Clean Elections Act, which provide participating candidates with additional funds if non-participating opponents or outside groups spend above the statutory threshold. On January 20, 2010, the district court struck down the trigger provisions, and defendants appealed to the Ninth Circuit Court of Appeals. On May 21, 2010, the Ninth Circuit unanimously held that the “trigger provisions” were consistent with the First Amendment, reversing the district court’s ruling.

Case Status: On June 27, 2011, the Supreme Court struck down the trigger provisions, holding in a narrow 5-4 opinion that the trigger provisions substantially burdened the plaintiffs’ First Amendment rights and were not justified by any compelling governmental interest.

CLC Position/Involvement: On February 22, 2011, the CLC and D21 filed an *amici* brief on behalf of themselves and six other public interest groups with the Supreme Court to defend the Arizona law. The CLC also coordinated the *amici curiae* that filed in support of the defendants. The CLC previously filed an *amici* brief with the district court on July 24, 2009.

U.S. v. O’Donnell, No. 09-50296 (9th Cir.), cert. petition No. 10-1099 (U.S. Sup. Ct.) [CLOSED]

Case Description: Pierce O’Donnell was indicted for contributing \$26,000 of his money to the Edwards for President campaign through 13 individuals – primarily employees of his law firm– with the understanding that he would either advance them funds or reimburse them after the contribution was made. In June 2009, a federal district court dismissed two counts of the indictment that were based on a federal law provision, *see* 2 U.S.C. § 441f, which prohibited donors from making contributions “in the name of another.” The district court found that this provision applied only to contributions made under false names, and not to a person’s reimbursement of the contributions made by others to a political campaign.

On June 14, 2010, the Ninth Circuit Court of Appeals reversed the district court decision and held that federal law “prohibits straw donor contributions, in which a defendant solicits others to donate to a candidate for federal office in their own names and furnishes the money for the gift either through an advance or a prearranged reimbursement.”

Case Status: O’Donnell’s petition for rehearing *en banc* of the Court of Appeals decision was denied on December 6, 2010. **O’Donnell filed a petition for *certiorari* with the Supreme Court on March 7, 2011, and it was denied on April 4, 2011.**

On August 4, 2011, O’Donnell pled guilty to two misdemeanor federal charges of making illegal campaign contributions. On Nov. 14, 2011, the district court rejected the plea bargain, however, and the case has consequently been set for trial.

CLC Position/Involvement: On September 23, 2009, the CLC, with D21, filed an *amici* brief with the Ninth Circuit, urging the Court to correct the erroneous interpretation given to the federal law provision by the district court.

FEDERAL LAW LITIGATION

***Bluman v. FEC*, No. 10-1766 (D.D.C.)**

Case Description: On October 19, 2010, plaintiffs filed suit in the U.S. District Court for the District of Columbia to challenge the federal restrictions on contributions and expenditures by foreign nationals in connection to local, state or federal elections, *see* 2 U.S.C. § 441e, as applied to foreigners legally living and working in the U.S.

The FEC moved to dismiss the challenge on December 21, 2010. Plaintiffs filed a motion for summary judgment on January 18, 2011. The court granted plaintiffs' petition for a three-judge court with direct appeal to the Supreme Court on January 7, 2011.

Case Status: On August 8, 2011, the three-judge court granted the FEC's motion to dismiss, holding that Congress had a compelling interest in restricting contributions and expenditure made by legal temporary residents. On September 1, plaintiffs filed their jurisdictional statement requesting Supreme Court review.

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

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

Case Description: The 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* implicitly undercut the constitutional basis of the federal restriction on corporate contributions, and that the federal restriction was therefore unconstitutional. The district court failed to cite *FEC v. Beaumont*, the 2003 Supreme Court ruling that had upheld the federal restriction, in its decision.

The court then requested additional briefing on the applicability of *Beaumont* to the criminal proceedings. On June 7, 2011, the 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 16, 2011, the government filed a notice of appeal to the Fourth Circuit. The government filed its opening brief on October 19, 2011, and defendants' response is due January 2, 2012.

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.

***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 Supreme Court decision in *Citizens United*. Plaintiffs filed an amended complaint in the district court on May 21, 2010.

Case Status: 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 law on October 14, 2008 with the district court, and on April 24, 2009 with the Fourth Circuit.

The Real Truth About Obama, Inc. (RTAO) v. FEC, No. 08-cv-00483 (E.D. Va.), No. 11-1760 (4th Cir.)

Case Description: RTAO filed suit in the U.S. District Court for the Eastern District of Virginia to enjoin a number of 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, and plaintiff thereafter petitioned the Supreme Court for *certiorari*.

On April 26, 2010, the 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, both RTAO and the FEC filed motions for summary judgment. The two FEC regulations that were not mooted by *Citizens United* are 11 C.F.R. § 100.22(b) (defining "express advocacy") and the FEC's policy for determining a group's "major purpose," both of which effectuate only disclosure requirements at this point. On June 16, 2011, the district court granted summary judgment to the FEC, finding that the regulations remaining under challenge were constitutional.

Case Status: Plaintiffs filed a notice of appeal on July 15, 2011. **The appeal was fully briefed on November 3, 2011**, and remains pending before the Fourth Circuit.

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.)

Case Description: On April 21, 2011, Representative Chris Van Hollen (D-MD) filed a lawsuit against FEC in federal district court to challenge a 2007 FEC regulation that narrowed the scope of federal disclosure requirements connected to electioneering communications. Plaintiff challenges 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.

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.

Case Status: Both parties filed cross-summary judgment motions, and these motions were fully briefed by October 2011. **Oral argument is scheduled for January 11, 2012.**

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

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

Case Description: Plaintiffs challenge constitutionality of the federal governmental contractor contribution ban, 2 U.S.C. § 441c, as applied to individuals who have personal services contracts with federal agencies.

Case Status: On October 19, 2011, plaintiffs filed a complaint with the United States District Court for the District of Columbia. On November 17, 2011, plaintiffs moved the court to certify the case under to the D.C. Circuit Court of Appeals pursuant to 2 U.S.C. § 437h.

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

STATE/MUNICIPAL LAW LITIGATION

State Disclosure Cases

***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 charged that (1) the state records law was facially unconstitutional in connection to ballot measure petitions, and (2) the law was unconstitutional as applied to petitions for Referenda 71, a domestic partnership ballot measure, given allegations that supporters of the measure had experienced harassment. On September 10, 2009, the district court issued a preliminary injunction blocking the release of the petitions. But 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 Referenda 71 specifically. Plaintiffs petitioned for *certiorari*, and the Supreme Court accepted the case.

Case Status: On June 24, 2010, the Supreme Court upheld the law on its face. The Court, however, remanded the case to the district court, allowing the district court to consider plaintiffs' remaining as-applied claim.

On remand, the parties filed motions for summary judgment, and **on October 17, 2011, the district scheduled granted summary judgment for the state.** On November 8, 2011, the district court denied plaintiffs' motion for an injunction pending appeal, and on November 28, the U.S. Supreme Court denied plaintiffs an injunction pending appeal.

CLC Position/Involvement: The CLC has been tracking 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 multiple provisions of Washington's ballot measure disclosure law. Specifically, plaintiff challenged:

- (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 limit in the 21-day pre-election period. On September 16, 2010, plaintiff appealed.

On October 5, the Ninth Circuit Court of Appeals granted the state's request to stay the district court decision to invalidate the contribution limit. On October 12, 2010, the U.S. Supreme Court declined to vacate the stay.

Case Status: The appeal was fully briefed in March of 2011. **Oral argument was heard on November 16, 2011.**

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

Human Life of Washington, Inc. (“HLW”) v. Brumsickle, No. 09-35128 (9th Cir.) [CLOSED]

Case Description: In April 2008, HLW challenged the constitutionality of several components of the State of Washington’s political committee disclosure regime, including the State’s definitions of “political committee,” “independent expenditure,” and “political advertising.” The district court rejected HLW’s challenges to these disclosure provisions in January 2009, and plaintiff appealed to the Ninth Circuit Court of Appeals.

On October 12, 2010, the Ninth Circuit affirmed the district court decision, and rejected all claims asserted by HLW.

Case Status: HLW filed a petition for *certiorari*, but the Supreme Court declined to grant cert on **February 22, 2011**.

CLC Position/Involvement: On June 4, 2009, the CLC filed an *amicus* brief with the Ninth Circuit to defend the disclosure laws.

National Organization for Marriage (NOM) 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:

(1) 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.

(2) In June 2009, NOM filed an amended complaint adding new counts 5-8 to challenge laws addressing 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:

(1) On February 12, 2011, the district court rejected plaintiffs’ challenge to Maine’s ballot measure disclosure law, endorsing its early decision rejecting the TRO. Plaintiffs appealed to the First Circuit Court of Appeals on February 22, 2011. **The Court of Appeals heard oral argument on September 14, 2011.**

(2) On August 19, 2010, the district court ruled on counts 5-8, rejecting in large part plaintiffs’ claims, but found 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, but 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 Supreme Court.

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

National Organization for Marriage (NOM) v. Roberts, No. 1:10-cv-00192 (N.D. Fla.), on appeal NOM v. Browning, 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 in the Supreme Court decision in *WRTL v. FEC*, and that the disclosure requirements are too onerous to be imposed on “non-major-purpose” groups. On November 8, 2010, the court denied plaintiff’s motion for a preliminary injunction.

On March 2, 2011 both plaintiffs and defendants filed cross-motions for summary judgment with the district court, and on August 8, the court granted summary judgment in favor of defendants.

Case Status: On September 2, 2011 plaintiffs filed a notice of appeal. **Plaintiff-appellants filed their opening brief with the Eleventh Circuit Court of Appeals on October 31, 2011.**

CLC Position/Involvement: The CLC filed an *amicus* brief to defend Florida’s disclosure law on December 15, 2011.

Ohio Right to Life (ORTL) v. Ohio Election Commission, 08-cv-00492 (S.D. Ohio)

Case Description: ORTL filed suit in the U.S. District Court of the Southern District of Ohio to challenge multiple provisions of Ohio’s campaign finance law, including its “electioneering communications” corporate funding prohibition and related disclosure requirements. On September 5, 2008, the district court granted in part, and denied in part plaintiff’s motion for a preliminary injunction, but rejected ORTL’s request to enjoin Ohio’s electioneering communications disclosure requirements.

On August 24, 2010, plaintiff filed an amended complaint in light of *Citizens United* that broadened the case to request an injunction not only of the electioneering communications funding prohibition, but of all Ohio restrictions on corporate and union political spending.

Case Status: The court entered a consent judgment on September 15, 2010, wherein the parties agreed that the state electioneering communications corporate funding restrictions are unconstitutional. However, on September 20, the court found that it did not have jurisdiction to consider the statutory challenge to the state disclosure requirements. **The plaintiffs then agreed to dismiss their remaining disclosure claims, and the court ordered dismissal with prejudice on July 20, 2011.**

CLC Position/Involvement: On July 18, 2008, the CLC filed an *amici* brief on behalf of itself and Ohio Citizen Action, defending the constitutionality of Ohio’s electioneering communications disclosure requirements.

Protectmarriage.com v. Bowen, 2:09-cv-00058 (E.D. Calif.)

Case Description: Plaintiffs brought a challenge in the U.S. District Court for the Eastern District of California to California’s statutory requirement that ballot measure committees disclose the names and other information of their contributors of \$100 or more. Specifically, plaintiffs seek “an as-applied blanket exemption from California’s compelled disclosure provisions because Plaintiffs have demonstrated a reasonable probability that compelled disclosure will result in threats, harassment, and reprisals because of their support for Proposition 8.” Additionally, plaintiffs contend that the law’s \$100 threshold for the disclosure of contributors is not narrowly tailored.

Case Status: The court denied plaintiffs’ motion for a preliminary injunction on January 30, 2009.

The parties filed cross-motions for summary judgment in 2011. **The district court granted summary judgment in favor of the state on October 20, 2011 in a ruling from the bench.** Plaintiffs filed a notice of appeal on December 2, 2011.

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. The Party alleges that the King Street Patriots, 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, the King Street Patriots 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.

Case Status: Both parties filed cross-motions for summary judgment on the King Street Patriots' counterclaim, which were fully briefed on September 23, 2011. **Oral argument on was heard by the District Court of Travis County, Texas on November 8, 2011.**

CLC Position/Involvement: On September 21, 2011, the CLC the filed an *amicus* brief to oppose the counterclaim and to defend the constitutionality of Texas's campaign finance law.

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, 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 *West Virginians for Life* 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. Plaintiffs CIF and WVFL filed motions for summary judgment in September 2010. 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 appealed the district court decision to the Fourth Circuit Court of Appeals. **The state's opening brief is due December 21, 2011.**

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

State Contribution Limit Cases

Iowa Right to Life (IRTL) v. Miller, No. 10-cv-00416 (S.D. Iowa)

Case Description: On September 7, 2010, IRTL filed suit to challenge several aspects of Iowa's campaign finance law, arguing that:

- 1) The state definition for “political committee” is vague and overbroad;
- 2) The state independent expenditure disclosure requirements are tantamount to the imposition of political committee status on groups making independent expenditures and are therefore subject to strict scrutiny.
- 3) The state restriction on corporate contributions is unconstitutional, and the court should reject the Supreme Court’s 2003 decision in *Beaumont v. FEC* upholding the constitutionality of corporate contribution limits.
- 4) The state requirement that entities obtain annual approval from their board of directors for independent expenditures is unconstitutional.

On October 20, 2010, the district court denied plaintiff’s motion for a preliminary injunction as to all claims.

Case Status: On June 29, 2011, the district court granted summary judgment in favor of the state on three of the four claims. The court upheld the state independent expenditure disclosure requirements, the restriction on corporate contributions and the requirement that associations obtain board approval for independent expenditures. The court, however, did not rule on Count One of the complaint (definition of “political committee”) and directed this question to the state Supreme Court for further clarification of the law.

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

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

Case Description: On July 7, 2010, MCCL challenged multiple provisions of Minnesota’s campaign finance law, including:

- (1) The state requirement that associations establish “political funds,” subject to registration, record-keeping and reporting requirements, to make independent expenditures.
- (2) The restriction on corporate contributions to parties and candidates. MCCL also requests that the court reconsider the Supreme Court’s decision in *Beaumont v. FEC*.

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 June 1, 2011, the plaintiffs petitioned the Court of Appeals for an *en banc* rehearing of the May 16 decision, and the Court granted the petition on July 12, 2011. **Oral argument was heard on September 21, 2011.**

CLC Position/Involvement: On December 22, 2010, the CLC, with D21, filed an *amici* brief with the Eighth Circuit to defend Minnesota’s disclosure law and its corporate contributions restriction. The CLC and D21 again filed an *amici* brief upon the Court of Appeals’ decision to rehear the case in July of 2011.

Thalheimer v. City of San Diego, No. 10-55322 (9th Cir.)

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 they only make independent expenditures. Plaintiffs also challenged the City’s prohibition on political contributions by “non-individual entities” (*e.g.*, corporations, labor unions and other groups) to candidates, political parties and other PACs that contribute to candidates. In February 2010, the district court preliminarily enjoined the contribution limit applicable to independent

expenditure committees and but refused to enjoin the prohibition on contributions by non-individual entities except as applied to political parties. Plaintiffs appealed.

Case Status: On June 9, 2011, the Ninth Circuit upheld the prohibition on contributions from “non-individual entities” in connection to corporations and other associations, but affirmed the district court’s decision to enjoin the prohibition as applied to political parties. The Ninth Circuit also affirmed the district court’s decision to preliminarily enjoin the contribution limits as applied to independent expenditure groups.

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

State Public Financing Cases

***Cushing v. McKee*, No. 1:10-cv-00330 (D. Maine), on appeal *Respect Maine PAC v. McKee*, No. 10-2119 (1st Cir.) [CLOSED]**

Case Description: Plaintiffs challenged the “trigger provisions” of Maine’s public financing program which provide a participating candidate with additional funds if a non-participating opponent and outside groups together outspend the participating candidate. Plaintiffs also challenge the state independent expenditure reporting requirements, and argue that the contribution limits are unconstitutionally low.

The district court denied plaintiffs’ motion for a TRO and their motion for a preliminary injunction on September 15, 2010 and September 17, 2010, respectively. The plaintiffs appealed the decision to the First Circuit, which affirmed the district court on October 29, 2010.

Case Status: On December 23, 2010, the district court stayed the action pending a decision by the Supreme Court in *McComish v. Bennett*. **Following *McComish*, however, the district court on July 21, 2011 struck down the challenged trigger provisions.**

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

***Wisconsin Right to Life v. Brennan*, 3:09-cv-00764 (W.D. Wis.), No. 11-1769 (7th Cir.)**

Case Description: In December 2009, plaintiffs filed suit to challenge the “trigger provisions” of Wisconsin’s recently-enacted public financing program, as well as other program components. Plaintiffs moved for summary judgment on July 9, 2010. On March 31, 2011, the court ruled for the defendants and dismissed the case.

Case Status: On April 1, 2011, the plaintiffs filed a notice of appeal. However, on July 1, 2011, the state moved to dismiss the appeal as moot because the state had repealed the judicial campaign public financing system in its entirety (2011 Wis. Act 32), including the provisions specifically challenged by plaintiffs. On August 1, 2011, the Court of Appeals dismissed the appeal as moot, and on September 1, the district court vacated its earlier judgment.

CLC Position/Involvement: With Justice at Stake, the CLC filed an *amici* brief on June 17, 2011 to defend the trigger provisions, arguing that Wisconsin program was distinguishable from *McComish* because it related to judicial elections.