

COURT CASES OF INTEREST
BY THE CAMPAIGN LEGAL CENTER
(July 2011)

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, 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.

On June 8, 2010, the Supreme Court stayed the implementation of the Ninth Circuit’s decision.

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.

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.

Case Status: 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. Oral argument was heard May 12, 2011.

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

***Carey v. FEC*, No. 11-cv-00259 (D.D.C.)**

Case Description: On January 31, 2011, plaintiffs filed a complaint and motion for a preliminary injunction in the U.S. District Court for the District of Columbia, challenging the federal contribution limits as applied to National Defense PAC, a political committee that makes both independent expenditures and contributions to candidates. NDPAC wishes to make contributions to candidates from a segregated bank account comprised of funds raised under the federal contribution limits, but to accept unlimited “soft money” contributions for the purpose of funding its independent activities.

Case Status: On June 14, 2011, the district court preliminary enjoined the contribution limits as applied to the funds used by NDPAC for independent expenditures. NDPAC, however, is required to maintain separate bank accounts for its “hard money” and “soft money” activities, and to pay related administrative costs proportionately.

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 contribution on grounds that the Supreme Court’s 2010 decision in *Citizens United v. FEC* 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 decision that had upheld the federal restriction.

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. On June 17, the district court stayed the proceedings.

CLC Position/Involvement: The CLC has been tracking this case, and intends to participate as an *amici curiae*.

***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.)**

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."

Case Status: Upon remand to the district court, RTAO filed motions for a preliminary injunction and summary judgment, and the FEC filed a motion for summary judgment. On June 16, 2011, the court granted summary judgment to the FEC, finding that the regulations remaining under challenge were constitutional.

CLC Position/Involvement: The CLC, with D21, filed an *amici* brief with the district court after the case was remanded on October 17, 2010. The CLC previously filed *amici* briefs with the district court and the Fourth Circuit on August 14, 2008 and October 28, 2008, respectively.

***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: Van Hollen filed a motion for summary judgment on July 1, 2011.

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

STATE/MUNICIPAL LAW LITIGATION

State Disclosure Cases

***Center for Individual Freedom (CIF) v. Madigan*, No. 10-cv-04383 (N.D. Ill.)**

Case Description: On July 12, 2010, CIF initiated an action in the U.S. District Court of the Northern District of Illinois challenging two disclosure-related provisions of Illinois law.

CIF challenged the state provision requiring non-profit organizations to register and report if they spend over \$5,000 on expenditures on behalf of or in opposition to candidates. It also argued that the provisions regulating political committees are unconstitutionally vague and overbroad because they require groups to register and file regular disclosure reports if they accept contributions or make expenditures over \$3,000 on behalf of or in opposition to candidates.

Case Status: 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 March 9, 2011, defendants moved to dismiss the case and on March 25, plaintiffs moved for summary judgment. The briefing of this motions is ongoing.

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.)**

Case Description: Plaintiffs initiated this action 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 the state records law was unconstitutional (1) in connection to ballot measure petitions, and (2) as applied to petitions for Referenda 71, a domestic partnership ballot measure. On September 10, 2009, the district court issued a preliminary injunction blocking the release of the petitions, but the Ninth Circuit Court of Appeals stayed the injunction, allowing the release of petitions. The Supreme Court, however, intervened on October 20, 2009 to again block the petitions' release.

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 facially. The Court, however, remanded the case to the district court, allowing the consideration of plaintiffs' as-applied claim to go forward. The Supreme Court also ordered the district court's original preliminary injunction to remain in effect.

On remand, the district scheduled a bench trial for September 27, 2011.

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.

Case Status: 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 stay this appellate court decision. The parties are currently briefing the appeal.

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. The Court found that political disclosure laws are not subject to strict scrutiny, and that a group whose major purpose did not relate to the nomination or election of a candidate could still be subject to comprehensive reporting requirements.

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.

***Montana Shrugged v. Unsworth*, No. 10-cv-00135 (D. Mont.)**

Case Description: In October 2010, Montana Shrugged became the subject of a citizen’s complaint filed with the state Commissioner of Political Practices. Shortly after this

administrative complaint was filed, plaintiffs challenged the constitutionality of multiple provisions of Montana’s campaign finance law, including:

- (1) The state prohibition on corporate expenditures to influence state elections;
- (2) The state prohibition on “coordinated expenditures” by corporations;
- (3) The statutory definitions of “expenditure” and “political committee”;
- (4) The disclosure requirements applicable to “incidental political committees”; and
- (5) The state disclaimer requirements for “communications advocating the success or defeat of a candidate.”

On October 29, 2010, plaintiffs filed a motion for a temporary restraining order and a preliminary injunction. The TRO was denied on November 3, 2010.

Case Status: Defendants filed a motion to dismiss on January 7, 2011. The district court granted the motion on May 11, 2011 on grounds that Montana Shrugged lacked standing, highlighting that the Commissioner of Political Practices had dismissed the complaint against Montana Shrugged at the administrative level.

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

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

Case Description: On September 21, 2010, 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 the following:

- (1) The state “political committee” definition and attendant political committee regulations;
- (2) The state restrictions on corporate expenditures; and
- (3) The state definition of “independent expenditure” and the independent expenditure disclosure requirements.

Case Status: On October 28, 2010, the district court denied plaintiff’s motion for a preliminary injunction. Plaintiff has appealed the decision to the First Circuit, and oral argument was held on April 5, 2011.

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

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. The parties then both filed judgment motions on these claims, and oral argument was heard on January 24, 2011.

(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. The parties agreed to consolidate the preliminary injunction hearing with the trial, and the consolidated hearing and trial on these new issues occurred 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, and the appeal has been fully briefed.

(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 is unconstitutionally burdensome.

Plaintiffs and defendants appealed this decision on August 20, 2010 and September 2, 2010, respectively. Oral argument was heard by the Court of Appeals on April 5, 2011.

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. Cruz-Bustillo, No. 10-15295 (11th Cir.)

Case Description: On September 22, 2010, plaintiffs filed suit to challenge a Florida statute that requires groups that are not registered as a political committee to register and report if they make over \$5,000 of electioneering communications in a calendar year. Plaintiffs 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*. On November 8, 2010, the court denied plaintiff’s motion for a preliminary injunction.

Case Status: On November 16, 2010, plaintiffs appealed to the Eleventh Circuit Court of Appeals. The appeal was dismissed for want of prosecution on January 25, 2011.

On March 1, 2011, the district court lifted the stay on the proceedings, and on March 2, both plaintiffs and defendants filed cross-motions for summary judgment.

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

National Organization for Marriage (NOM) v. Walsh, No. 1:10-cv-00751 (W.D.N.Y.), on appeal No. 10-4572 (2d Cir.)

Case Description: On September 16, 2010, NOM challenged New York’s statutory definition of “political committee” as vague and overbroad. NOM also argued that political

committee status under New York law, which entailed disclosure requirements, could not be imposed on groups whose major purpose did not relate to campaign activity. On October 25, 2010, the district court dismissed the challenge on jurisdictional grounds, *i.e.* plaintiff's claims were not ripe.

Case Status: Plaintiff filed a notice of appeal on November 1, 2010. NOM's filed its opening brief with the Second Circuit Court of Appeals on February 8, 2011; the state's brief was due May 2, 2011. Oral argument is scheduled for August 24, 2011.

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

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. On August 26, 2010, ORTL filed a motion for a temporary restraining order to enjoin the state restrictions on corporate expenditures, as well as the electioneering communications disclosure provisions on state statutory grounds.

Case Status: The court entered a consent judgment on September 15, 2010, wherein the parties agreed that the state electioneering communications corporate funding restrictions were unconstitutional. However, on September 20, the court found that it did not have jurisdiction to consider the statutory challenge to the state disclosure requirements.

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 are currently conducting discovery. Discovery has been ordered to be complete by May 26, 2011, and trial is currently scheduled for March 26, 2012.

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

Vermont Right to Life Committee, Inc. (VRTL) v. Sorell, 09-cv-00188 (D.Vt.)

Case Description: VRTL is 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 a motion for a preliminary injunction on August 14, 2009 and a motion for a TRO on September 22, 2009, and defendants and plaintiffs cross-moved for summary judgment on February 6, 2010.

Plaintiffs filed an amended complaint on July 19, 2010, and on August 9, 2010, the Court found that the prior motions filed by the parties were moot in light of the amended complaint. In the amended complaint, plaintiffs also challenge the state contribution limits as applied to political committees making only independent expenditures and the \$100 threshold for reporting contributions to a committee.

Case Status: The parties are currently conducting discovery.

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

Center for Individual Freedom (CIF) v. Tennant, No. 1:08-cv-00190 (S.D.W. Vir.) (lead case), consolidated with West Virginians for Life (WVFL) v. Ireland, No. 1:08-cv-01133 (S.D.W. Vir.)

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, and enjoined the law’s definitions of the terms “expressly advocating” and “electioneering communication.”

Case Status: On September 16, 2009, the Court granted plaintiffs’ motion to stay proceedings pending the resolution of *The Real Truth About Obama v. FEC*. On September 3, 2010, the Court granted plaintiffs’ motion to lift the stay and for leave to file new summary judgment motions. Plaintiffs CIF and WVFL filed motions for summary judgment in September 2010, and the court heard oral argument on the motions on February 11, 2011.

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

State Contribution Limit Cases

Committee on JOBS, et al. v. Herrera, 07-cv-03199 (N.D. Cal.)

Case Description: In June 2007, two political committees filed a challenge in the U.S. District Court for the Northern District of California to the constitutionality of San Francisco's limit on contributions to political committees that make only independent expenditures in City elections. The district court granted plaintiffs' motion for a preliminary injunction enjoining the law.

Case Status: The parties are currently in settlement negotiations. The parties reached a settlement agreement in May 2011, which they anticipate will be officially approved by the City by July 29, 2011.

CLC Position/Involvement: On August 27, 2007, the CLC filed an *amici* brief on behalf of itself and four other nonprofit political reform organizations supporting the constitutionality of the San Francisco contribution limits.

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

Case Description: On September 7, 2010, IRTL filed suit in the U.S. District Court for the Southern District of Iowa to challenge several aspects of Iowa's campaign finance law. IRTL argues 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 to candidates and political parties should be found 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. No appeal of this decision was filed.

Case Status: On June 29, 2011, the district court granted summary judgment for the state on three of the four claims, upholding the state independent expenditure disclosure requirements, the restriction on corporate contributions and the requirement that associations obtain board approval for their independent expenditures. The court, however, did not rule on count one of the complaint pertaining to political committee status 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 pertaining to the regulation of corporations. The challenged provisions include:

- (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.

Case Status: 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 comprehensive disclosure requirements for independent expenditures and the state restriction on corporate contributions. On June 1, 2011, the plaintiffs petitioned the Court of Appeals for an *en banc* rehearing of the decision, and the Court granted the petition on July 12, 2011.

CLC Position/Involvement: On December 22, 2010, the CLC, with D21, filed an *amici* brief to defend Minnesota’s disclosure law and its restrictions on corporate contributions.

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 “non-individual entities” contribution prohibition as 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 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 limit.

***Yamada v. Kuramoto*, 10-cv-00497 (D. Haw.), on appeal No. 10-17280 (9th Cir.)**

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

- (1) The statutory definitions of “political committee,” “expenditure” and other terms;
- (2) The electioneering communications reporting requirements;
- (3) The disclaimer requirement 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 relief only with respect to the contribution limits as applied to independent expenditure committees. Defendants appealed this decision to the Ninth Circuit Court of Appeals.

On October 29, 2010, the district court then denied plaintiffs’ motion for a preliminary injunction on the remaining issues. No appeal of this second order has been filed.

Case Status: The appeal of the first preliminary injunction order was fully briefed as of February 2011. On June 9, 2011, the state voluntarily dismissed its appeal.

On December 6, 2010, the district court stayed the proceedings pending the Supreme Court’s action on the petition for *certiorari* in *Human Life of Washington v. Brumsickle*. In June 2011, the court lifted the stay, and scheduled a bench trial for June 13, 2012.

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

***Wisconsin Right to Life (WRTL) v. Myse*, No. 10-CV-0669 (E.D. Wisc.)**

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

- (1) The definition of “political committee” is vague and overbroad, and regulation of WRTL as a political committee is unconstitutional;
- (2) Regulation of WRTL as an independent expenditure organization is unconstitutional;
- (3) The 24-hour reporting requirement is unduly burdensome;
- (4) The oath regarding an organization’s independent expenditures is unconstitutional as a prior restraint;
- (5) The \$20 and \$100 reporting thresholds are unconstitutionally low;
- (6) The contribution limit as applied to political committees making only independent expenditures is unconstitutional;
- (7) The contribution limit as applied to WRTL contributions to its PAC, WRTL-SPAC, is unconstitutional; and
- (8) The disclaimer requirements applicable to electoral speech are unconstitutionally burdensome.

On August 30, 2010, defendants filed a motion to stay the proceedings on abstention grounds pending the resolution of two additional cases challenging Wisconsin campaign finance law, *Wisconsin Club for Growth, Inc. v. Myse*, 10-CV-427 (W.D. Wis.) and *Wisconsin Prosperity Network, Inc. v. Myse*, 2010AP1937-OA (Wis. Sup. Ct.). The court granted the stay on September 19, 2010, and denied plaintiffs' motion for reconsideration.

Case Status: On June 24, 2011, plaintiffs moved to lift the stay as to one as-applied claim in their complaint (Count 9).

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

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.)**

Case Description: Plaintiffs challenge 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. Plaintiffs filed a motion for a preliminary injunction and a motion for a temporary restraining order on August 5 and August 31, 2010, respectively.

Case Status: 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, and denied plaintiffs' motion for reconsideration.

On December 23, 2010, the district court stayed the action pending a decision by the Supreme Court in *McComish v. Bennett*.

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

***Wisconsin Right to Life v. Brennan*, 3:09-cv-00764 (W.D. Wis.), No. 11-1769 (7th Cir.) (*Koschnick v. Doyle*, 3:09-cv-00767 (W.D. Wis.)**

Case Description: In December 2009, two cases were filed to challenge the trigger provisions of Wisconsin's recently-enacted public financing program, as well as other program components. These cases were consolidated.

Plaintiffs in *Brennan* moved for summary judgment on July 9, 2010; defendants cross-moved for judgment on the pleadings on the same date. On March 31, 2011, the court ruled for the defendants and dismissed the case.

Plaintiff in *Koschnick* moved for judgment on the pleadings on March 1, 2010; the defendants' opposition was filed April 30, 2010. On March 31, 2011, the district court dismissed the suit on the basis that the plaintiff candidate lacked standing as his plans to run in the future as a privately-financed candidate were entirely speculative.

Case Status: On April 1, 2011, the *Brennan* plaintiffs filed a notice of appeal, and on the same day, the Seventh Circuit denied an emergency motion for an injunction pending appeal. The appeal is currently fully briefed. 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.

CLC Position/Involvement: With Justice at Stake, the CLC filed an *amici* brief on June 17, 2011.