A Progress Report for 2018 to Supporters of the Institute for Free Speech

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Mission

The Institute for Free Speech (IFS), through strategic litigation, communication, activism, training, research, and education, works to promote and defend the political rights to free speech, press, assembly, and petition guaranteed by the First Amendment.

Scope of this Report

This report covers activities related to the use of funds in 2018 from supporters of our efforts to protect and advance free political speech and to protect donor privacy.

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Strategic Litigation

During 2018, the Institute for Free Speech represented clients in 10 cases expanding First Amendment political liberties. IFS also filed amicus briefs in 12 other important cases in 2018, and 19 cases that were active in 2018 had IFS amicus briefs under consideration. Much of this litigation is aimed specifically at combating burdensome and privacy invasive disclosure rules.

Active Cases as of December 31, 2018

The title of each case, its general subject, and the date our participation began follows:

- *Calzone v. Missouri Administrative Hearing Commission* (lobbying disclosure), April 14, 2016.
- *Calzone v. Missouri Ethics Commission* (lobbying disclosure), October 21, 2016.
- *Federal Election Commission v. Jeremy Johnson and John Swallow* (challenge to unconstitutionally vague, statutorily unsupported regulation), October 23, 2017.
- *Howard Jarvis Taxpayers Association v. Governor of the State of California* (constitutionality of passage of law to enable tax-financed campaigns), December 12, 2016
- *Institute for Free Speech v. Becerra* (disclosure of giving to charities), March 7, 2014.
- *Institute for Free Speech v. Ravnsborg, et al.* (compelled speech, including top five donor disclosure on face of communication), October 8, 2018.
- *Joe Markley and Rob Sampson v. State Elections Enforcement Commission* (limits on candidate speech), May 7, 2018.
- *Massachusetts Fiscal Alliance v. Sullivan* (compelled speech, including top five donor disclosure and CEO disclaimer on face of communication), October 9, 2018.
- *Thomas v. Schroer* (constitutionality of state political sign regulations on private property), December 4, 2017.

Notable Institute for Free Speech court and agency wins during 2018 include:

- On October 16, 2018, IFS, acting as plaintiff on its own behalf, successfully obtained a federal court injunction barring South Dakota from prosecuting IFS for publishing an educational analysis of two ballot measures affecting speech rights. The law could have punished IFS for not listing our top donors in the analysis.

- On July 16, 2018, the Department of the Treasury and the Internal Revenue Service jointly announced a decision to modify IRS regulations to no longer require the names and home addresses of major donors to be listed on forms filed by certain groups organized under Section 501(c) of the tax code. This significant policy change helps protect Americans' privacy and freedom of association. It is partly the

result of sustained advocacy for donor privacy at the IRS, an area where the Institute for Free Speech has served as a leader.

- On June 18, 2018, IFS's amicus brief in *Lozman v Riviera Beach* was cited in Justice Anthony Kennedy's majority opinion. This case centered around Fane Lozman, a citizen activist and former Marine, who was arrested when speaking before the Riviera Beach City Council – in comments highlighting city corruption. His arrest was demanded by a city counselor as political retribution. We argued in our brief that Lozman's First Amendment rights do not dissolve simply because the arresting officer had probable cause for the arrest. The Supreme Court agreed in an 8-1 decision. We filed this brief in conjunction with famed First Amendment litigator Floyd Abrams.

- Following IFS's filing of a certiorari-stage amicus brief, the U.S. Supreme Court agreed to review a Minnesota law restricting apparel with political messages and ruled in favor of the First Amendment.

  We also filed a second brief arguing the merits of the challenge.

  In the Court's opinion, issued June 14, 2018, Chief Justice John Roberts wrote: "Would a 'Support Our Troops' shirt be banned, if one of the candidates or parties had expressed a view on military funding or aid for veterans? What about a '#MeToo' shirt, referencing the movement to increase awareness of sexual harassment and assault?" The law was so vague that Minnesota could not provide an answer.

  As our brief told the Court, "this case provides an opportunity for the Court to reaffirm that vague efforts to regulate mere 'political activity' cannot be reconciled with the First Amendment." Thanks in part to our briefs, the Supreme Court decided to review the Minnesota law and struck it down in a 7-2 decision.

- On April 6, 2018, a federal judge struck down a Federal Election Commission (FEC) regulation expanding liability for contributions made through straw donors in *Federal Election Commission v. Jeremy Johnson and John Swallow*.

  The FEC has long been able to punish people for breaking campaign fundraising limits. But the FEC claimed that a 1989 regulation allowed it to punish people who merely helped fundraise for candidates – even when someone else broke the fundraising limit. It used that regulation to file a lawsuit against our client, former Utah Attorney General John Swallow. The Institute for Free Speech countered that the law did not allow the FEC to write such a regulation.

U.S. District Court Judge Dee Benson agreed. He ruled that he had to decide "whether the Federal Election Commission had the right to promulgate [the regulation]. The answer is no. The Commission, as an independent agency created by Congress for the sole purpose of enforcing [the Federal Election Campaign Act] had no authority to write a regulation that went beyond the Act itself."

The judge ordered the FEC to remove the regulation from the Code of Federal Regulations and dismissed the lawsuit against Mr. Swallow.

This win helps establish an important principle: the FEC cannot go beyond the law to limit and punish political speech the agency doesn't like.

Congress has already passed too many laws restricting free speech. We don't want the FEC creating more limits on its own. That's why we agreed to represent Mr. Swallow.

On September 20, 2018, Judge Benson issued another ruling dismissing the case against Mr. Swallow. The FEC failed to appeal the decision by the November 20 deadline. We will soon submit a request for attorney's fees, which would be the final action in this case.

- In response to our litigation on behalf of a cross-ideological group of PR firms, the New York State Joint Commission on Public Ethics (JCOPE) agreed to change its regulations that required public relations professionals to register and report as lobbyists. That agreement came after an appeal was filed with the U.S. Court of Appeals for the Second Circuit. In response, the parties in the litigation agreed to end the lawsuit. The case was finally closed in May 2018 when JCOPE revised the regulation in a manner that respected First Amendment rights.

Amicus Briefs

The Institute for Free Speech filed briefs as *amicus curiae* in the following cases that were active for at least a portion of 2018 (dates listed are dates the brief was filed):

- *Tate v. United States*, U.S. Supreme Court, in support of certiorari (The government should not import civil enforcement decisions of the Federal Election Commission as a means to impose criminal liability.), December 7, 2018.
- *Montanans for Community Development v. Mangan*, U.S. Supreme Court, in support of certiorari (The Court should reaffirm precedent that groups can be regulated as political committees only if their major purpose is the election or defeat of a candidate.), October 24, 2018.
- *Nieves v. Bartlett*, U.S. Supreme Court, merits brief (Does probable cause for arrest defeat a First Amendment retaliation claim?), October 9, 2018.
- *Libertarian National Committee, Inc., v. Federal Election Commission*, United States Court of Appeals for the District of Columbia Circuit (Does imposing annual contribution limits against the bequest of a supporter violate the First Amendment rights of the Libertarian National Committee and two other related questions.), September 12, 2018.
- *Timbs v. Indiana*, U.S. Supreme Court, merits brief (Does the Excessive Fines Clause of the Eighth Amendment apply to the states?), September 10, 2018.
- *Lair v. Mangan*, U.S. Supreme Court, in support of certiorari (The Court should clarify that "exacting scrutiny" applies to contribution limits.), September 4, 2018.
- *Zimmerman v. Austin*, U.S. Supreme Court, in support of certiorari (whether an "appearance of corruption" based solely on perceptions of public opinion can justify limits on campaign contributions), August 16, 2018.
- *Citizens Union of the City of New York, et al. v. Attorney General of the State of New York*, U.S. District Court for the Southern District of New York (arguing that a broad disclosure law is unconstitutional), July 2, 2018.
- *Utah Republican Party v. Cox*, U.S. Court of Appeals for the Tenth Circuit, in support of *en banc* reconsideration (urged the court to reconsider its ruling harming associational rights), April 25, 2018.
- *French v. Jones*, U.S. Supreme Court, in support of certiorari (May states restrict judicial candidates from seeking, accepting, or using political party endorsements?), April 6, 2018.
- *Minnesota Voters Alliance, et al. v. Joe Mansky, et al.*, U.S. Supreme Court, merits brief (arguing the lower court erred when it ruled a ban on non-campaign messages printed on shirts was constitutional), January 12, 2018.
- *Holland v. Williams*, U.S. District Court, District of Colorado (objections to Motion to Restrict Public Access), January 11, 2018.

- *Lozman v. Riviera Beach*, U.S. Supreme Court, merits brief (Does the existence of probable cause defeat a First Amendment retaliatory arrest claim as a matter of law?), December 29, 2017.
- *Blagojevich v. United States*, U.S. Supreme Court, in support of certiorari (campaign contribution motivations should not be susceptible to second-guessing under vague and overbroad standards), December 2, 2017.
- *Carpenter v. United States*, U.S. Supreme Court, merits brief (the impact of warrantless government access to cell phone location information on the First Amendment right to free association), August 14, 2017.
- *State of Washington v. Grocery Manufacturers Association*, Washington State Court of Appeals, Division II (arguing that an $18 million fine for a minor campaign finance filing error is unconstitutional and chills campaign speech), July 20, 2017.
- *Minnesota Voters Alliance, et al. v. Joe Mansky, et al.*, U.S. Supreme Court, in support of certiorari, July 3, 2017.
- *Coloradans for a Better Future v. Campaign Integrity Watchdog, LLC*, Colorado Supreme Court (arguing that pro bono legal work on litigation to defend constitutional rights should not be counted as a campaign contribution), October 20, 2016.
- *Holland v. Williams*, District Court for the District of Colorado (arguing that Colorado's private enforcement of campaign finance law is unconstitutional), April 10, 2016.
- *Public Citizen v. Federal Election Commission*, U.S. District Court for the District of Columbia (arguing the court should defer to the findings of the three FEC Commissioners concerning a political committee status determination), September 17, 2014.

New Staff

Parker Douglas, Senior Attorney

Parker joined the Institute for Free Speech as a Senior Attorney in September 2018. He graduated Order of the Coif from the S.J. Quinney School of Law at the University of Utah, where he was Editor-in-Chief of the *Utah Law Review*. Parker also holds a Ph.D. with Honors from the University of California, Santa Barbara, and graduated with honors from Pitzer College of the Claremont Colleges, with a double major in English and History.

Prior to joining IFS, Parker was the 2017-2018 Supreme Court Fellow assigned to the Supreme Court of the United States, where he served in the Office of the Counselor to the Chief Justice. Previously, he served as Utah Federal Solicitor to Utah Attorney General Sean Reyes, where he litigated Utah's trial, appellate, multi-state, and amicus matters in all federal courts. Parker has also been an Assistant Federal Defender, practiced in the Supreme Court and Appellate section of Latham & Watkins's Washington, D.C. office, and taught several law courses at the University of Utah, S.J. Quinney School of Law. He was law clerk to the Honorable Michael W. McConnell, then of the Tenth Circuit Court of Appeals and now Director of the Constitutional Law Center at Stanford University, and to the Honorable Tena Campbell of the United States District Court for the District of Utah.

Parker has litigated over 300 federal matters and numerous others in state courts. He has tried many cases to a verdict – both to juries and the bench – argued over forty appeals in federal and state courts of appeal, as well as suppression, Daubert, and dispositive motions, recorded in over fifty opinions. Parker has also represented clients on appeal or through amicus briefing in every federal court of appeals, including the Supreme Court, and in many state courts of appeal.

Ryan Morrison, Attorney

Ryan joined the Institute for Free Speech as an Attorney in December 2018. He began his career as a prosecutor at the U.S. Department of Justice in Washington, D.C. through the Attorney General's Honors Program. Ryan was a trial attorney in the Criminal Section of the Civil Rights Division and also worked as a Special Assistant U.S. Attorney at the U.S. Attorney's Office for the District of Columbia.

Subsequently, Ryan accepted an appointment from President George W. Bush and joined the U.S. Air Force Office of the General Counsel as Special Counsel and Special Assistant to the General Counsel. In addition to working on Air Force matters, Ryan assisted the U.S. Department of Defense Office of the General Counsel with congressional investigations and the Department's legislative program. He received the Secretary of Defense's Outstanding Achievement Award for his service. At the end of the Bush administration, Ryan became an Associate General Counsel in the Office of the Deputy General Counsel

(Legal Counsel) for the U.S. Department of Defense and represented the Department's interests in Guantanamo Bay habeas corpus litigation. Later, Ryan clerked for the Honorable Eugene E. Siler, Jr. for the U.S. Court of Appeals for the Sixth Circuit and entered private practice after his clerkship.

He became an associate at the Louisville, Kentucky office of Dinsmore & Shohl LLP and represented Fortune 500 and Fortune Global 500 companies in various types of litigation. After four years of private practice, he joined Kentucky Governor Matt Bevin's administration and served in multiple roles.

Ryan graduated Order of the Coif from the University of Kentucky College of Law, where he was a member of the *Kentucky Law Journal* and the president of the Federalist Society. He graduated *summa cum laude* with a B.S. in finance from Western Kentucky University.

Research

The Institute for Free Speech firmly believes that long-term success cannot come solely though court action, but must include moving both the law and public opinion. It is not necessary to win over majorities (though we strive to do so), but it is necessary to have strong minorities interested in preserving speech rights if we are to improve existing laws or block bad bills from becoming law and secure good court decisions over time.

To this end, our research efforts are aimed at improving public understanding of the impact of political speech regulations and reinforcing our litigation and external relations efforts with solid arguments in support of (or opposition to) speech-related proposals in Congress and state legislatures.

Promotion of Senior Research Analyst Scott Blackburn to Research Director

In mid-September, we promoted longtime Senior Research Analyst Scott Blackburn to Research Director. In his new role as Research Director, Blackburn is leading an expansion of the Institute's efforts to inform public understanding of free speech issues. Past IFS research has included an extensive study of state contribution limit laws, a series of analyses on empirical claims made by proponents of tax-financed campaign programs, and a history of IRS treatment of nonprofit advocacy groups, among many other original publications. In particular, Blackburn is focused on producing original research and spearheading an initiative to work with notable academics to study and produce scholarly research on topical political speech issues under the organization's banner. Prior to becoming Research Director, Blackburn originally joined the organization in June 2014 as a Research Fellow and was eventually promoted to Senior Research Analyst.

Publication of the First-Ever Free Speech Index

In late March 2018, the Institute for Free Speech released its first *Free Speech Index – Grading the 50 States on Political Giving Freedom*. Our Index ranks and grades all 50 states on the freedom of individuals, political parties, and groups to contribute to causes and candidates they support. We created this Index to assess the harm restrictions on political speech do to Americans' First Amendment rights.

The Index reveals that many states are doing a poor job on the political giving freedoms we studied. A majority of states scored less than 50%, and 11 scored under 20%. Kentucky fared worst, at only 2%. By contrast, Alabama, Nebraska, Oregon, Utah, and Virginia received perfect scores. Six other states also earned "A" grades.

Media coverage of the *Free Speech Index* was overwhelmingly positive. *The Wall Street Journal* ran an editorial highlighting the Index as an important resource. Steve Doocy of "Fox & Friends" interviewed IFS president David Keating about the Index. Pro-free speech

editorials praising the Index appeared in many papers, including *The Oklahoman* (Oklahoma City), the *Sarasota Herald-Tribune* (reprinted in five other Florida papers), *The Gazette* (Colorado Springs), and the *Belleville News-Democrat* (Illinois).

National and state-focused op-ed articles about the Index by its authors and contributors appeared in 18 publications, including *The Baltimore Sun*, *Des Moines Register*, *Huntington Herald-Dispatch*, *Jackson Clarion-Ledger*, *Juneau Empire*, *Lincoln Journal Star*, *The Salt Lake Tribune*, *San Antonio Express-News*, *Washington Examiner*, and *The Washington Post*.

Publication of First-Ever 50-State Survey of Campaign Finance and Lobbying Laws

The Institute for Free Speech continued work on a publication that surveys campaign finance and lobbying statutes across the states as well as Washington, D.C., New York City, and Seattle that impact free political speech. The survey looks at twelve broad issue areas: (1) false statement laws; (2) definitions of "expenditure" and "express advocacy"; (3) electioneering communications; (4) donor reporting requirements for independent expenditures made by non-PACs; (5) disclaimer requirements; (6) statutory or regulatory authority for super PACs; (7) major/primary purpose for PAC status; (8) PAC status determination and thresholds; (9) regulation of "incidental committees"; (10) private enforcement actions; (11) coordination; and (12) lobbying. It was released in March 2019.

This first-of-its-kind compendium will help inform members of the public and state policymakers about complex and onerous laws burdening political speech. By revealing information not only on how the states compare with each other, but also on how a given state regulates various issues pertaining to speech about government, this document will provide a useful guide to public interest organizations and policymakers on the obstacles facing First Amendment-friendly policies.

Publication of Eight Short Research Explainers for the Public

To persuade policymakers, the media, and the public, one must be concise. To that end, IFS published eight explainers this year, none more than two pages, that focus on quickly conveying a single message. These papers highlighted a range of topics from internet speech to the constitutionality of state disclosure laws and the landmark Supreme Court cases, *NAACP v. Alabama* and *Buckley v. Valeo*. Some other notable publications include "Understanding the Differences Between Political and Issue Advocacy" and "Be on the Lookout: Four Red Flags in Bills that Will Chill Online Speech." These resources supplemented our already extensive library of explainers on topics that affect political speech. Efforts in this area further IFS's goal of being the go-to source for information and expertise on issues implicating political speech and association and provide lawmakers with easy-to-digest arguments both to support good laws and push back against speech-harming proposals.

Analyzing the Free Speech Record of Supreme Court Nominee, Judge Brett Kavanaugh

The Institute for Free Speech undertook a thorough, five-part analysis of the First Amendment record of President Trump's Supreme Court nominee, Judge Brett Kavanaugh. IFS Chairman Bradley A. Smith also published a detailed analysis rebutting misleading claims by anti-speech activists about Kavanaugh's First Amendment judicial record. Smith and IFS President David Keating also published op-eds in *National Review* and *USA Today*, respectively, highlighting our analysis of Kavanaugh's record. Our work was featured in various roundups by Supreme Court commentators, by the State Policy Network, and in news articles linking to our analyses as well.

External Relations

To stop bad legislation or to improve bad laws, it is essential that lawmakers understand their constitutional responsibilities and that organizations that strongly support the First Amendment rights to free political speech be informed of legislative threats and opportunities.

Expert Commentary and Analysis

In 2018, Institute for Free Speech experts were invited to testify on legislation and filed comments with federal and state regulators many times. IFS Legal Director Allen Dickerson testified before the Federal Election Commission and the Massachusetts Office of Campaign and Political Finance on speech-restricting regulatory proposals. Additionally, Staff Attorney Tyler Martinez was invited to testify before an Idaho Interim Committee considering a bill that would expand the state's "electioneering communication" statute. Staff Attorney Zac Morgan was invited to testify on legislation in Michigan that would prohibit state regulators from going beyond the confines of Michigan's Campaign Finance Act to require nonprofits to disclose their volunteers, supporters, or donors. Martinez's testimony spurred the Committee to make significant improvements to the bill, and after Morgan's testimony, the Committee approved the measure.

Comments Supporting Free Speech Filed at the FEC and Similar State Agencies

The Institute for Free Speech has long been a leading voice for the First Amendment at the Federal Election Commission and similar state agencies. In 2018, IFS filed three significant comments with the FEC highlighting the First Amendment impact of proposed regulations as well as a Petition for Rulemaking on an important question concerning the definition of "contribution."

Most significantly, IFS submitted detailed comments to the Commission responding to a proposed rulemaking to require disclaimers on certain Internet ads. Our 30-page comments outlined the threats to free speech posed by the Commission's proposed rule, promoted the Internet as a technologically-evolving medium crucial to public discourse, and made clear that any regulation must not stymie the free flow of information in cyberspace. In particular, we proposed extending the FEC's small item exemption to many internet ads, so that would-be speakers would not have their message overwhelmed by FEC disclaimer mandates. As a result of these comments, IFS Legal Director Allen Dickerson was asked to testify before the Commission on this rulemaking. Dickerson was the first speaker on the first panel before the FEC's day-and-a-half-long hearing. He set the stage for the Commission by focusing the rulemaking on the proper statutory authority of the agency and the First Amendment impacts of the proposed disclaimer rules.

The Institute's other comments to the FEC also focused on First Amendment protections. Our comments on independent expenditure reporting by candidates urged the FEC to provide a simplified and clarified version of proposed rules that would prevent a future constitutional challenge. The Institute's comments on a rulemaking clarifying the permissible use of campaign funds by former candidates and officeholders urged the FEC to enforce their existing rules, instead of adding new, unnecessary, and complex regulations.

In response to a decision in the U.S. District Court for the District of Columbia invalidating a Commission regulation on non-PAC entities making independent expenditures, IFS filed a Petition for Rulemaking with the FEC seeking clarity on the definition of "contribution" in order to limit groups' donor reporting obligations. The court's ruling said that those who donate to an advocacy group "for political purposes" must be disclosed. However, that phrase is still quite vague and potentially overbroad, and thus the petition calls upon the FEC to remedy that defect by adopting a rule.

The Institute also filed comments with the National Park Service warning of the dangers of a proposed rule to levy fees and implement other restrictions on those wishing to hold protests and demonstrations in the nation's capital. We also joined a bipartisan coalition letter authored by TechFreedom expressing our concerns to the Department of Justice about a planned meeting of state attorneys general to discuss antitrust actions against dominant social media platforms for perceived political bias.

IFS has engaged in regulatory work at the state level as well. In February 2018, Dickerson testified before the Massachusetts Office of Campaign and Political Finance against a rulemaking that sought to broaden the state's disclosure rules and remove constitutional protections for private association. Dickerson was one of only two speakers at the hearing outlining the legal issues with the agency's proposal.

Working directly with regulatory agencies is often arduous and unglamorous work, but it is critically important. Our work often allows us to influence the implementation of speech-protecting rules or stop the enactment of speech-restricting rules. When this work is ignored, courts frequently uphold many harmful regulations. Even when courts strike down anti-speech rules, the process can take years, and it is much easier to prevent bad regulations from being implemented in the first place.

Reaching Lawmakers, Allies, and the Public through Speaking Engagements

We strive to educate the public, judges, lawmakers, and regulators about the importance of free speech. In 2018, IFS staff spoke at 40 conferences and forums. Notable speaking engagements featuring IFS representatives last year included a Cato Institute debate on *NAACP v. Alabama*, a Capital Research Center forum on *Citizens United*, a National Constitution Center debate on amending the Constitution to authorize political spending limits, a donor privacy-focused panel at the State Government Affairs Council's Policy

Conference for state legislative leaders, panels at both the American Legislative Exchange Council's (ALEC) Annual Meeting and States and Nation Policy Summit on the threat of online speech regulation legislation, a panel at State Policy Network's Annual Meeting on emerging threats to donor privacy, the Republican National Lawyers Association National Election Day Seminar, the first-annual conference of an anti-speech group, Represent.Us, and the annual meetings of the Council on Government Ethics Laws and the Institute for Excellence in Corporate Governance as well as the Winter Meeting of the First Amendment Lawyers Association. IFS experts have also spoken at American University, Duke University Law School, Fordham Law School, Stanford University Law School, University of Kansas Law School, Princeton University, and multiple Federalist Society chapters across the country. We estimate collective attendance at these events at more than 1,500 people.

Communications and Media Outreach

A crucial component of the Institute for Free Speech's overall mission is to educate and persuade the public about the danger to liberty from excessive regulations on political speech. In the long term, without an informed public that shares our skepticism of laws limiting political rights, there is little possibility of holding back the most excessive and extreme demands of anti-First Amendment activists.

The Institute for Free Speech's communications efforts strengthen and complement our other work. For example, the lawsuits we file provide excellent opportunities for news coverage. This helps to influence public opinion about campaign restrictions and how they impact First Amendment rights.

An important aspect of our media outreach and communications efforts is the daily distribution of our signature Media Update. It compiles the top stories of the day on political speech issues and also promotes the Institute for Free Speech's litigation, op-ed placements, original blog posts, and research. The Media Update is distributed by email to over 550 reporters, nonprofit attorneys, campaign finance experts, and other influencers of public policy on free speech every weekday morning.

Institute for Free Speech experts also write regular posts of our pro-First Amendment views on the influential Election Law Listserv hosted by University of California Irvine School of Law, which is monitored by many reporters who cover campaigns or campaign finance issues.

In addition, Institute for Free Speech Chairman Bradley A. Smith and President David Keating are bi-monthly contributors on topical political speech issues to the *Washington Examiner*. The Heritage Foundation's InsiderOnline website also re-publishes select Institute for Free Speech blog posts. Both partnerships allow us to broaden the reach of our arguments to a large audience.

Promotion of Senior Policy Analyst Luke Wachob to Communications Director and Communications Fellow Alex Baiocco to Media Manager

In mid-September, the Institute announced the promotion of longtime staffer Luke Wachob to Communications Director. In his new role as Communications Director, Wachob coordinates the Institute's media outreach strategy and efforts to provide timely and compelling commentary on the free speech issues of the day. As part of this endeavor, Wachob draws on his considerable experience writing op-eds, policy papers, and blog posts for the Institute. Prior to being named Communications Director, Wachob originally joined the organization in June 2013 as an intern before being promoted to Policy Analyst and eventually Senior Policy Analyst.

In an effort to further augment the Institute's media outreach efforts, Communications Fellow Alex Baiocco was promoted to Media Manager in mid-September. As Media Manager, Baiocco is responsible for promoting the Institute's commentary, research, and litigation on social media. He also assists the Institute with graphic design work, authors op-eds and blog posts, and continues to curate and produce the Institute's signature daily Media Update. Prior to being named Media Manager, Baiocco joined IFS as a Communications Fellow in July 2016.

Recapping the Institute's 2018 Media Outreach

The Institute for Free Speech lived up to its reputation as the go-to source for journalists seeking to understand political speech issues in 2018. IFS experts were quoted in more than 275 news articles, including articles in *The Wall Street Journal*, *The New York Times*, *The Washington Post*, *USA Today*, the *New York Post*, *NPR*, *CNN.com*, *FoxNews.com*, and *The Atlantic.* IFS experts were also quoted in major regional newspapers, such as the *Detroit Free Press*, the *Las Vegas-Review Journal*, *The Salt Lake Tribune*, the *Deseret News*, the *Connecticut Post*, and *The Raleigh News and Observer*, among many others.

In addition, IFS experts were frequently asked to comment on political speech controversies on television and radio programs. IFS President David Keating appeared on Fox News Channel's "*Fox & Friends*" morning show to discuss the Institute's *Free Speech Index*. IFS Chairman Bradley Smith appeared on two Fox News shows during 2018 – Laura Ingraham's *The Ingraham Angle* and Mark Levin's *Life, Liberty & Levin* – as well as C-SPAN's long-running interview show, *Washington Journal*. Smith recently filmed a documentary on *Citizens United* for MSNBC that will air in early 2019 as well. IFS staff also made numerous appearances on regional television and radio stations and participated in podcasts for organizations such as Americans for Tax Reform, Capital Research Center, the Cato Institute, and more.

Over 70 outlets published op-ed articles by Institute for Free Speech staff in 2018. These pieces have been featured in national and state-based newspapers across the country, including *The Wall Street Journal*, *USA Today*, *The Washington Post*, *New York Daily News*, *Washington Examiner*, *The Hill*, *The Federalist*, *National Review*, and *Reason* as well as *The Arizona Republic*, *Baltimore Sun*, *Concord Monitor*, *Des Moines Register*, *The Detroit News*, *Illinois Business Journal*, *Orlando Sentinel*, *Pueblo Chieftain*, *Puget Sound Business Journal*, *Salt Lake Tribune*, *San Antonio Express-News*, and the *Texas Tribune*. Several of these outlets have published multiple op-eds by IFS experts.

In addition to authoring op-eds, Institute for Free Speech staff contributed over 60 posts to the Institute's blog in 2018. The Institute's blog offers IFS experts a platform to dig deep on policy issues, contribute to ongoing debates about political speech regulation, or comment on stories that failed to receive adequate attention in media coverage. Our blog also creates additional opportunities to promote and discuss IFS research, legislative analyses, and legal cases through the lens of current events.

The New and Improved IFS.org

In November 2018, we debuted our new website, which is easier to navigate, pleasing to browse, and serves as a one-stop shop for all of the Institute's work defending the First Amendment.

The website's new design is modern, mobile-friendly, and boasts an improved search function. Our extensive libraries of First Amendment research, litigation, analysis, and commentary are now more accessible than ever before. The site also offers a variety of options to contact the organization, whether a user is looking to join our e-mail lists or wants IFS to represent them in court.

ProxyFacts.org

The Institute for Free Speech unveiled this website in 2013, which is regularly updated and dedicated to the facts surrounding activist investing and corporate political spending. The site, ProxyFacts.org, is a compendium of information on the issue, and includes insight and analysis from experts such as Institute for Free Speech Founder and former FEC Chairman Bradley A. Smith, former SEC Commissioner Paul Atkins, and James R. Copland, a Senior Fellow and Director of Legal Policy at the Manhattan Institute.

This website is intended to be a resource that explores the reality behind efforts aimed at limiting corporate speech. Often, the facts regarding political spending disclosure are very different from the picture narrow interest groups paint for the media, investors, and policymakers.

This site examines and debunks common myths spread by activists seeking to silence corporate engagement in policy debates. The public benefits from more speech and more speakers, and any effort to target and suppress speech by any group should be rejected. Thus far, the debate has been defined by a small, coordinated group who are using the shareholder proxy process and other tactics to silence corporate speech and achieve their narrow and unrelated public policy goals.

A New Design for IFS's Quarterly Newsletter, *Speaking Freely*

The Institute for Free Speech redesigned its quarterly newsletter, *Speaking Freely*, in fall 2018. The newsletter keeps our supporters informed about the Institute's latest work defending the First Amendment. It also helps introduce IFS to potential new supporters. The newsletter was redesigned to provide more space for photos and images, to improve the newsletter's overall layout and appearance, and to create a more pleasant reading experience. The newsletter's modern design reinforces our branding and offers an attractive introduction to the Institute for Free Speech and our work.

Name Change

The U.S. Patent and Trademark Office approved our word mark for the Institute for Free Speech on April 3, 2018 and our lantern design mark on September 11, 2018.

Four Star Charity

Institute for Free Speech Again Awarded 4-Star Rating, the Top Ranking, from Charity Navigator

For the fourth year in a row, the Institute for Free Speech was awarded the highest possible rating by Charity Navigator for "demonstrating strong financial health and commitment to accountability and transparency."

Charity Navigator's coveted 4-star rating indicates that the Institute for Free Speech exceeds industry standards in pursuing our mission in a financially efficient way. In terms of points, the Institute for Free Speech earned its highest rating to date, 97 out of a possible 100 points.

Charity Navigator first rated the Institute for Free Speech in 2015, awarding a 4-star rating. The 4-star rating was reaffirmed in April 2018.

Litigation Detail

The following are short descriptions of each case we are currently litigating (in alphabetical order):

Calzone v. Missouri Ethics Commission **(lobbying disclosure)**

Our representation of Mr. Calzone, a citizen activist in Missouri, began in August 2015. Some legislators and lobbyists in the state attempted to silence Mr. Calzone, who has for many years advocated for individual liberty, free markets, and constitutionally limited government. Unfortunately, as Mr. Calzone says, "My activism has made some powerful enemies… Maybe high-paid lobbyists don't like having to explain to their clients why average citizens, using nothing more than facts, reason, and speech, beat them at their own game time and again." In his own words, Calzone has "angered powerful legislators by opposing them when they were trying to advance unconstitutional bills or ignore constitutional limits on their power."

Mr. Calzone's difficulties with state regulators began on Election Day 2014, when the Society of Government Consultants, a lobbyist guild in Missouri, filed a complaint with the Missouri Ethics Commission. The complaint alleged that when Mr. Calzone spoke with legislators during his advocacy, he was acting as a lobbyist – despite having never been paid or in any way compensated – and that his failure to register as a lobbyist with the state was against the law, subjecting him to fines and possibly even jail time.

The Institute for Free Speech's legal team stepped in to defend Mr. Calzone against these absurd charges, representing Calzone in September 2015 when his case came before the Missouri Ethics Commission. The Commission hearing was a travesty of justice. For over four hours, behind closed doors, the Commission violated basic Constitutional guarantees and ignored the plain words of Missouri laws. Witnesses that the Institute for Free Speech's attorneys had never been informed about testified against Mr. Calzone, documents were entered as evidence that were never verified, and the investigator for the Commission quoted interviews she allegedly conducted with lawmakers, despite admitting that she had deleted all of her notes.

In the end, by using a convoluted and irrational reading of "designated" and "employed," the Commission concluded that Mr. Calzone was a lobbyist and sought to fine him $1,000 for not properly registering with the state before expressing his opinions about Missouri legislative proposals to state legislators.

Mr. Calzone has never been paid a cent to lobby and never made any gifts to legislators or their staffs. He is a volunteer for a citizens group that has no budget, but it does have a website and Facebook page to spread the word about legislation being considered by the General Assembly.

During the hearing, the Institute for Free Speech discovered that these trumped up charges against Mr. Calzone were nothing more than a thinly-veiled attempt to muzzle a citizen that lawmakers and lobbyists view as a thorn in their side. Indeed, a representative of the lobbyist guild that brought the complaint testified that two Missouri lawmakers, who had reason to dislike Mr. Calzone, had spoken with the lobbyists and strongly encouraged them to initiate the complaint.

We are also representing Mr. Calzone in state court, but those actions have been postponed until the federal litigation has been resolved.

Success in this case would protect the First Amendment right to petition government for a redress of grievances.

Notable Case Actions: On June 26, 2017, a federal court judge ruled that the state law was constitutional. An appeal and briefs were filed with the United States Court of Appeals for the Eighth Circuit, and oral argument was heard on April 10, 2018. On November 28, a divided Eighth Circuit upheld the district court. Judge Stras dissented, noting that neither the government nor the majority had explained "why compiling a list of people who are engaging in core political speech is 'important'" to the state.

IFS sought *en banc* review, which was granted on January 29, 2019.

Federal Election Commission v. Jeremy Johnson and John Swallow **(unconstitutionally vague regulation)**

This case is described on pp. 3-4.

Howard Jarvis Taxpayers Association v. Governor of the State of California **(constitutionality of passage of law to enable tax-financed campaigns)**

Can state legislators overturn the will of the people in order to institute tax-financed campaigns?

Under California law, the Institute for Free Speech believes the answer is clearly no. On behalf of the Howard Jarvis Taxpayers Association and retired State Senator and Judge Quentin L. Kopp, IFS joins the Center for Constitutional Jurisprudence and Bell, McAndrews, and Hiltachk, LLP in a suit against California for enacting a law that would do just that, in violation of the state's constitution and law.

In 1974, voters passed the Political Reform Act of 1974 via the state's robust initiative process. In 1988, that initiative was amended, again by voters, with the passage of Proposition 73, which prohibited tax dollars from being used for the purpose of funding politicians' campaigns. In 2000, again by initiative, voters reaffirmed the ban on tax-

financed campaigns by passing Proposition 34. In order to protect state legislators from tampering with the law, this initiative also revoked the ability of the Legislature to amend any part of the Political Reform Act without voter approval. Californians spoke clearly – any changes to the ban on tax-financed campaigns need to be approved by the voters, and not just with the passage of a bill by the Legislature.

But in 2016, California legislators ignored the voters of their state. They passed, and Governor Jerry Brown signed, S.B. 1107. That bill amended the Political Reform Act of 1974 to allow tax-financed campaigns at the state and local level, in direct contravention of the law, the California Constitution, and the clearly established desire of voters.

A Sacramento County Superior Court judge struck down the law on August 24, 2017. The court ruled the Legislature's attempt to bypass a vote of the people prohibiting such legislation was a violation of the California Constitution and the 1974 Political Reform Act, as amended. In his ruling, Judge Timothy M. Frawley noted that "the purpose of [Proposition 73] is straightforward: to ban taxpayer financing of political campaigns for elective office. [S.B. 1107] conflicts with the purposes of the Political Reform Act … because it violates this specific mandate." Judge Frawley wrote that "the issue in this case is not whether the Legislature's reversal on the ban on public financing of political campaigns is a good idea, it is only whether the amendment [by the Legislature] furthers the purposes of the Act…. [T]he court concludes it does not."

The Howard Jarvis Taxpayers Association (HJTA) is a nonprofit organization that, as part of its mission, represents California taxpayers in the courtroom. The illegal passage of S.B. 1107 is one such instance, and HJTA is the plaintiff along with Quentin L. Kopp, a California citizen, retired judge, and an original author of Proposition 73.

Success in this case will help protect the initiative process in California and ensure that tax-financed campaigns can become law only with approval by the voters.

Notable Case Actions: The complaint was filed on December 12, 2016 with the Sacramento Superior Court. The Court struck down the law on August 24, 2017. The state appealed the decision on January 9, 2018 to the Court of Appeal of the State of California, Third Appellate District. Briefs have been filed by both parties.

***Institute for Free Speech v. Becerra* (disclosure of giving to charities)**

As in most jurisdictions, charities soliciting contributions in California are required to register with the state. Each year, registered charities are required to file a copy of their IRS Form 990 tax returns with the California Attorney General's office as a condition of maintaining their constitutionally protected ability to solicit contributions. On Schedule B of the Form 990, charities are required to report to the IRS the names, addresses, and amount donated for major contributors during the year. The Schedule B is submitted to the

IRS on a confidential basis and, under federal law, the agency is prohibited from releasing this information to anyone – including state officials.

Historically, the California Attorney General has not required registered charities to file copies of their confidential, unredacted Form 990 Schedule B donor lists with the state. The Attorney General only began demanding this information in recent years, and the sudden demands did not arise from any changes in, and are not specifically authorized by, the state's laws and regulations. The Attorney General also has not cited any recent change in circumstances warranting these demands. Because the Attorney General is not legally entitled to this information and has no good reason for demanding it, the Institute for Free Speech filed suit to stop this practice.

We argue that the California Attorney General's demand for our donor information is an infringement of the Institute for Free Speech and its donors' First Amendment rights to free speech and association. Donors who may not necessarily wish to speak on their own about an issue may choose to exercise their right to speak by giving to an organization speaking on their behalf. This is particularly true for unpopular or controversial issues: precisely the type of speech for which the First Amendment's protections are most important.

Donors must be free to give to any lawful cause of their choosing without government intrusion. If government officials are looking over citizens' shoulders and reviewing which groups they give to, they will chill donors' willingness to give to certain groups, thereby reducing their ability to speak, and the effectiveness of their association.

The Attorney General also claims that the default rule should be for individual charities opposing demands for their donor information to demonstrate that they will face particularized harm from turning the data over to the government. In effect, this creates a catch-22 in which organizations and their donors can claim an exemption only after they have already suffered harm or threats, but organizations and donors would have no protection against potential future harm. First Amendment case law does not support such a backwards-looking rule.

Success in this case would protect the First Amendment right to free association, and consequently the range of opinions available to the public. It would also protect the privacy of donors to charitable organizations, which will encourage the public to give generously to support the charitable missions of a wide variety of organizations.

Notable Case Actions: We filed an amended complaint on August 12, 2016 and a motion for a preliminary injunction on August 19, 2016. On October 31, 2017, the federal district court ruled for the state. The case is on appeal with the United States Court of Appeals for the Ninth Circuit.

Institute for Free Speech v. Ravnsborg, et al. **(compelled speech, including top five donor disclosure on face of communication)**

When you're the Institute for Free Speech, educating citizens about threats to the First Amendment is an important part of your work. But if you do just that on a ballot measure in South Dakota, you could wind up in jail.

Why? Because South Dakota campaign laws regulate speech beyond political ads. A recently adopted law regulates any expenditure for any communication "concerning" a ballot measure. In order to publish our educational analysis of a pending 2018 ballot measure, the Institute filed a lawsuit in federal court challenging the law's constitutionality.

The law imposes absurd disclaimer requirements on groups that speak about ballot measures. These include, but are not limited to, a mandate that the publication list the organization's top individual contributors, even where those donors had no knowledge of the publication. This rule violates the privacy of donors who would otherwise remain private.

Failure to follow the law can result in prosecution and fines. Worse, South Dakota provides no way to get advice from the state about the reach of the law. As a result, the Institute for Free Speech turned to the courts to get its answer.

The Institute asked a federal court to allow us to publish our analysis of two ballot measures without prosecution by South Dakota.

On October 16, 2018, Judge Roberto A. Lange, a judge appointed by President Barack Obama, ruled in our favor. His order barred the state from prosecuting us for publishing our analysis. The next day, we published the analysis online and then announced it in a press release.

The court's order allowing us to publish our analysis was a significant victory for IFS, but problems in the law remain, and the case remains under litigation.

Success in this case would protect the First Amendment right to a free press, increasing information available to the public. It would also protect donor and associational privacy.

Joe Markley and Rob Sampson v. State Elections Enforcement Commission **(limits on candidate speech)**

In this case, the Institute for Free Speech seeks to protect voters' right to hear important information about elections and candidates. Connecticut's State Elections Enforcement Commission (SEEC) fined two General Assembly members for campaign mailers that discussed the governor's policies. With the help of IFS, the two candidates are fighting back.

Joe Markley, formerly a state senator, and Rob Sampson, then a state representative (and now a state senator), were ensnared by the law after they decided to split the costs on a series of standard campaign mailers highlighting their achievements in office. The mailers promoted Markley and Sampson as opponents of Governor Dannel Malloy's policies on taxes and government spending. Malloy was also on the ballot that year.

By criticizing the governor's record, the SEEC argued that Markley and Sampson made an illegal expenditure on behalf of the governor's opponent. The SEEC ordered Sampson to pay a $5,000 fine and ordered Markley to pay a $2,000 fine. In order for the ads to be legal, the SEEC believes the governor's opponent would have had to approve and share the costs of the ads. This is highly unrealistic and would result in legislative candidates being effectively prohibited from speaking about the governor's policies in campaign ads.

Markley and Sampson are represented by the Institute for Free Speech and Connecticut attorney Doug Dubitsky. We asked a Connecticut court to dismiss the fines and declare the law unconstitutional. After the state court ruled that it could not rule on the case because too much time had passed, our clients appealed.

Success in this case would protect the First Amendment rights to speak and publish.

Massachusetts Fiscal Alliance v. Sullivan **(compelled speech, including top five donor disclosure and CEO disclaimer on face of communication)**

Can the government hijack over 20 percent of an issue ad to promote the state's message? Can it force a speaker to name five people on the face of a print, internet, or television ad, even if those people had nothing to do with the communication's production? Those are the questions posed in *Massachusetts Fiscal Alliance v. Sullivan*.

Massachusetts, like many states, heavily burdens political speech by forcing groups to take a more formal organizational status, limits contributions to groups and candidates, and administers an intrusive donor disclosure regime.

But the Commonwealth goes even further than other jurisdictions, co-opting private political entities to speak government-drafted scripts on camera and forcing groups to forfeit the privacy of their donors as a condition of talking about policy.

The Massachusetts Fiscal Alliance wants to run print, radio, television, and internet communications that focus on two legislative issues: a tax increase proposal and a legislative pay raise. Because those ads will, by the nature of their content, reference an officeholder, the Commonwealth demands that the Alliance's chairman appear on televised communications for nearly 20 percent of the length of an ad and, for both radio and TV ads, personally read a script written for him by the State.

Why Massachusetts feels the need to force third party advertisers to show the race, gender, sex, speech pattern, and other irrelevant personal characteristics of a group's principal officer is unclear. Disclosure, at least in theory, is about giving relevant information to the voters shortly before an election – and this information is inherently unhelpful to the electorate.

The Commonwealth compounds this constitutional injury by compelling even more speech. Even groups that do not fall into Massachusetts's robust donor disclosure regime, like the Alliance, are forced to publicize their top five funders on the face of their communications. Once again, this information will be useless to the voters – none of the listed persons will have necessarily given to fund the ad, and they may not even agree with it. Nevertheless, Massachusetts has decided that donor privacy must be done away with — even if there is no articulable basis to argue the people losing that privacy truly authored or funded the ad.

On Election Day, Judge Rya W. Zobel denied the Alliance's request for a preliminary injunction. The group subsequently ran the issue communications it had intended – without the disclaimers, which are only required *before* the election. The case remains pending.

Success in this case would protect the First Amendment rights to speak and publish. It would also protect donor and associational privacy.

Thomas v. Schroer **(constitutionality of state political sign regulations on private property)**

The Institute for Free Speech is representing William H. Thomas, Jr. in the state's appeal of a ruling that Tennessee's sign rules are unconstitutional. In March 2017, a federal judge ruled for Thomas, saying Tennessee law violated the First Amendment by creating "an unconstitutional, content-based regulation of speech."

Mr. Thomas owns several roadside signs. This appeal concerns one such sign, which Mr. Thomas has used to express various non-commercial messages and opinions, such as cheering on U.S. athletes during the Olympics and celebrating "the glory of the season" during the holidays.

Tennessee has sought to tear down Mr. Thomas's sign, but crucially, it would not attempt to do so had it advertised on-site commercial activity or the sale of his property. Such ads are exempt under the law governing billboards in Tennessee. So if a nearby auto body shop wanted to advertise a sale on tires with the same-sized billboard, it could do so. As a result of this exemption, the state must look to a sign's content to determine whether it should be regulated. This creates a major First Amendment problem.

A law that permits a sign that says "cheap cigarettes here," but prohibits an identical-sized sign that reads "cut the property tax" or "pass the clean water act" is a content-based restriction on speech. Such restrictions must survive strict scrutiny.

Tennessee appealed the lower court's ruling last October. The Institute for Free Speech is representing Thomas during the appeal but was not involved in the case previously.

The case, known as *Thomas v. Schroer*, is currently before the Sixth Circuit Court of Appeals. John Schroer, Commissioner of the Tennessee Department of Transportation (TDOT), is a defendant in his official capacity only.

As the lower court decision recognized, Tennessee has failed to prove a valid reason for its two-track regulatory system for billboards. "In the instant case, the Court finds the State's interests in aesthetics and traffic safety are not compelling interests... The provisions at issue here concern the distinction between signs with content concerning on-premises-related activity versus other messages. The State fails to establish how this specific distinction relates to traffic safety and aesthetics," wrote Judge Jon P. McCalla.

In his opinion, Judge McCalla found that even if the state had proved the interests were valid, the law "is not narrowly tailored to those interests." He agreed that Thomas had suggested five possible alternatives that were less burdensome on speech.

Success in this case would protect the First Amendment rights to speak and publish.

Cases Closed in 2018

Holmes, et al. v. Federal Election Commission (irrational contribution limits)

This case raised an as-applied First Amendment challenge to a law that often allows congressional incumbents to raise twice as much for their general election campaigns as challengers. Federal campaign finance laws limit relevant campaign contributions to $2,700 for the primary election and $2,700 for the general election. However, donations of $5,400 are permitted through the day of the primary, though only half that amount can be spent on the primary race.

Incumbents, who face competitive primaries at a lower rate than challengers, can raise up to $5,400 in a single contribution and often spend it all on the general election. A challenger, on the other hand, will usually have to defeat opponents in the primary election and have scant primary funds left to spend on the November contest. After winning a primary, challengers may raise just $2,700 per donor for the general election. This state of affairs effectively halves the general election contribution limit for candidates facing a competitive primary.

On November 28, 2017, the D.C Circuit Court of Appeals Court upheld the law. The U.S. Supreme Court declined to review the decision in February 2018.

The November Team, et al., v. Joint Commission on Public Ethics **(lobbying disclosure)**

This case is described on page 4.

Amicus Briefs Detail

The following are short descriptions of each case in which the Institute for Free Speech filed an amicus brief in 2018 or those cases that remained active that year. The list appears in reverse chronological order.

***Tate v. United States*, U.S. Supreme Court, in support of certiorari (The government should not import civil enforcement decisions of the Federal Election Commission as a means to impose criminal liability.)**

At issue in this case is the conviction of several actors involved in a presidential campaign, who the government prosecuted under Sarbanes-Oxley's false submission prohibition and the federal False Statement statute. This had the effect of exposing the defendants to higher criminal liability without the "knowing and willful" state of mind standard required by the Federal Election Campaign Act (FECA). Our brief argues that such prosecutions are counter to Congress's intent in FECA that political speech be carefully regulated and that increasing criminal exposure on uncertain standards chills political speech.

The lower court's ruling raises due process and vagueness problems because Mr. Tate cannot have been on notice that criminal liability would flow from FEC enforcement principles never used to impose criminal liability previously, as they are not included in or discernable from the plain language of FECA, or the other primary statutes of his conviction. Because no notice through customary channels could have informed Mr. Tate of the possible criminal liability of his acts, his conviction threatens to chill the speech of others working in the political arena. Finally, the Supreme Court has recognized in the arena of political speech and campaign finance regulation that vague rules are anathema to clarity and threaten to chill speech. Consequently, this case calls for application of the rule of lenity.

Unfortunately, on March 18, 2019, the U.S. Supreme Court declined to review the case.

***Montanans for Community Development v. Mangan*, U.S. Supreme Court, in support of certiorari (The Court should reaffirm precedent that groups can be regulated as political committees only if their major purpose is the election or defeat of a candidate.)**

In the landmark 1976 case, *Buckley v. Valeo,* the Supreme Court narrowly construed a federal campaign finance law in order to shield civil society from overregulation. It did so, as the Court ruled in *N.Y. Times v.* Sullivan, to preserve our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." Unfortunately, the Court has failed to police one of its core holdings: the requirement that registering and reporting regulations may only be imposed upon groups "under the control of a candidate or [that have] the major purpose of… the nomination or

election of a candidate." This case provides an opportunity for the Court to reassert that standard.

Several states, including Montana, have chosen to enforce their campaign finance laws via a single, often politically involved, individual. Such arrangements raise the specter of partisan enforcement of the laws, or at the very least, the appearance of corrupt enforcement. Because the major purpose requirement is clear and objective, it greatly reduces such risks compared to the vague political committee laws at issue in this case. Mandating its application can alleviate the appearance of partisan enforcement not only in Montana, but nationwide.

Unfortunately, on February 19, 2019, the U.S. Supreme Court declined to review the case.

***Nieves v. Bartlett,* U.S. Supreme Court, merits brief (Does probable cause for arrest defeat a First Amendment retaliation claim?)**

In some federal courts, your First Amendment claim for retaliatory arrest can't win if there's probable cause for your arrest. In other federal appeals courts, it is one factor used to decide the case. Only the latter rule provides any real protection for free speech.

This issue is similar to one heard by the Supreme Court last term. In June 2018, the Supreme Court ruled in favor of Fane Lozman, who was arrested while speaking during public comment time at a city council meeting. A lower court had found probable cause, which barred his claim for retaliation. During arguments on the case, Chief Justice John Roberts said, "I found the video pretty chilling…. [He] is up there for about 15 seconds, and [then] he's being led off in handcuffs." While Lozman won, the Supreme Court limited its ruling to "facts like these," where it appeared the councilmembers had a grudge against Lozman. That's not the case here.

Giving this sort of unchecked power to the police still raises grave free speech concerns. It is far easier to cease one's controversial speech than it is to design one's life so that no police officer could ever suspect one of having committed a violation of any one of the innumerable laws imposed by our society. If probable cause can be used to defeat a free speech claim, the risks of attending or participating in controversial protests would multiply. If, for example, a clash between pro-choice and pro-life activists sparked a riot, under the rule proposed by government's side in this case, the police would be free to arrest only the pro-life activists when there was probable cause to do so. In fact, even if an officer acknowledged that she rounded up only pro-life protesters, an arrest would not be actionable so long as probable cause for a violation of law existed.

***Libertarian National Committee, Inc., v. Federal Election Commission*, United States Court of Appeals for the District of Columbia Circuit (Does imposing annual contribution limits against the bequest of a supporter violate the First Amendment rights of the Libertarian National Committee and two other related questions.)**

Our amicus brief sought to educate the Court on the scope of the Federal Election Commission's capacity to respond if a ruling from this Court finds that contribution limits on bequests are unconstitutional.

The brief urged the Court to fashion a broad, bright-line rule that cleanly clarifies the circumstances where contribution limits will not apply to bequests. Such a remedy is easily articulated, the brief explained. The Court should find that contribution limits are inappropriate where a bequest is made without any prior coordination with the recipient committee, and where that committee seeks to receive it only after the contributors' death. Such a ruling would be easily interpreted by the FEC and would eliminate any need for future litigation on the subject. The FEC should have little difficulty applying this standard via regulation or advisory opinion, but if it finds itself unable to, the harm to the regulated community will be minimal, because that community will know its rights.

***Timbs v. Indiana*, U.S. Supreme Court, merits brief (Does the Excessive Fines Clause of the Eighth Amendment apply to the states?)**

In a case related to civil forfeiture, the Indiana Supreme Court ruled that the Excessive Fines Clause of the Eighth Amendment to the U.S. Constitution did not apply to the states. Incredibly, the U.S. Supreme Court had never before been faced with this question.

Our brief discussed a disturbing trend that we have seen in many states – regulators have threatened outrageous fines for even minor, technical violations of campaign finance provisions. As a result, the threat of excessive fines itself works to chill speech.

Here, applying the Excessive Fines Clause to the states will bolster the rights protected by the First Amendment.

The Supreme Court ruled on February 20, 2019 that the clause does apply to the states.

***Lair v. Mangan*, U.S. Supreme Court, in support of certiorari (The Court should clarify that "exacting scrutiny" applies to contribution limits.)**

In the landmark 1976 Supreme Court decision, *Buckley v. Valeo*, the Court said that contribution limits could only "be sustained if the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms."

In 2006, the Court issued a new ruling in the case, *Randall v. Sorrell*, which found that Vermont's contribution limits were unconstitutionally low. Unfortunately, the *Randall* ruling's standards for judging whether a contribution limit is too low provides little useful guidance to the lower courts that are obliged to apply it.

Our amicus brief urged the Supreme Court to take this case and formally supersede the *Randall* plurality's opinion. The brief also urged the Court to clarify that *Buckley* mandates the application of "exacting scrutiny" to contribution limits.

The *Randall* ruling has created many opportunities for error and confusion. Governments should be required to justify their contribution limits before courts apply "exacting scrutiny" to determine whether they are constitutional. And those limits should rise or fall based upon the government's showing of need and proper tailoring. A contribution limit, as permitted in *Buckley*, is permissible only when narrowly and substantially related to the government's interest in combatting the "coercive influence of large financial contributions on candidates' positions and on their actions if elected."

Unfortunately, on January 14, 2019, the U.S. Supreme Court declined to review the case.

***Zimmerman v. Austin*, U.S. Supreme Court, in support of certiorari (whether an "appearance of corruption" based solely on perceptions of public opinion can justify limits on campaign contributions)**

Zimmerman challenged very low contribution limits to candidate campaigns, just $300, which were adopted through a ballot measure. This case asks whether a government can limit political speech and association solely because those activities are unpopular, as measured by public opinion polls. The Fifth Circuit required no more evidence than that, a decision that accords with a recent holding of the Ninth Circuit. By contrast, the Second, Sixth, and D.C. Circuits all require specific evidence that meets the Supreme Court's recent interpretations of the government's anti-corruption interest.

There was no evidence in the record showing *actual* corruption in Austin, Texas. The ballot initiatives, which created the campaign contribution limits at issue here, were a "response to the public perception that large campaign contributions from land developers and those with associated interests were creating a corrupt, 'pay-to-play' system in Austin politics." There was, however, no evidence in the record and no finding of the lower courts that such a corrupt system *actually* existed. Austin proceeded to limit speech and association on the basis of perception alone.

The Supreme Court has identified only one legitimate governmental interest sufficient to outweigh the considerable First Amendment rights inherent in contributions to political candidates and campaigns: "preventing corruption or the appearance of corruption."

The circuit courts that have reviewed this question have split in a variety of ways. The clearest conflict is over the evidence required to substantiate a government's claim of an interest in preventing an "appearance of corruption."

The lower court decision, which did not require any evidence of *quid pro quo* corruption and looked solely to evidence of popular opinion, is at one edge of the "no evidence required" position.

As our brief explained, "in today's highly-polarized and cynical political environment, relying solely on public perceptions opens the door to mischief. The appearance rationale for contribution limits 'means that the most zealous and aggressive advocates of restriction can make accusations, whether well founded in fact or not, and then use the very fact that some people believe the charges as a reason to justify regulation.'"

The further danger in this case and in *Lair v. Mangan*, another case that was appealed to the Supreme Court and described on pp. 30-31, is the possibility that some lower courts will use the "low" evidentiary bars of older Supreme Court cases.

Unfortunately, on December 10, 2018, the U.S. Supreme Court declined to review the case.

***Citizens Union of the City of New York, et al. v. Attorney General of the State of New York*, U.S. District Court for the Southern District of New York *(*arguing that a broad disclosure law is unconstitutional)**

This amicus brief was filed on behalf of a wide coalition of groups in support of a challenge to New York State's extremely burdensome donor disclosure laws. These laws would eliminate donor privacy for almost all nonprofits seeking to speak about public policy. David French of *National Review* wrote that this case is "one of the more important First Amendment challenges that you've likely never heard of," and we are committed to defeating this assault on free speech. Protection for anonymous speech on political issues is critical to preserving the First Amendment. This case may well reach the Supreme Court.

We are pleased to report that the Alliance for Justice, a national association of 130 organizations committed to progressive values, and The Philanthropy Roundtable joined our brief.

***Utah Republican Party v. Cox*, U.S. Court of Appeals for the Tenth Circuit, in support of *en banc* reconsideration (urged the court to reconsider its ruling harming associational rights)**

We noticed a decision by the U.S. Court of Appeals for the Tenth Circuit that threatened associational rights of advocacy groups. The plaintiff, the Utah Republican Party, petitioned for a rehearing of the case by the entire Tenth Circuit. We filed an amicus brief pointing out that the ruling might be cited as precedent to regulate the internal affairs of

groups other than political parties. The court refused to rehear the case, but in an unusual move, it amended its opinion. The change addressed the concerns raised in our amicus brief. Now this opinion cannot be used as precedent to regulate other advocacy groups.

***French v. Jones*, U.S. Supreme Court, in support of certiorari (May states restrict judicial candidates from seeking, accepting, or using political party endorsements?)**

Few things matter as much to voters as a party's endorsement of a candidate. A sign saying "John Smith for Judge" communicates only that someone named John Smith is running for judge. But adding "endorsed by the Republican Party" communicates something much more important: The Party has determined that Smith is well-qualified and shares the Party's judicial philosophy.

By barring candidates from saying that they have been endorsed by a party – and by barring candidates from asking the party to offer such endorsements – Montana's Judicial Code violates candidates' First Amendment rights. It also violates voters' First Amendment rights to receive information. It interferes with the democratic process, by blocking one of the few tools that unknown candidates can use to effectively challenge incumbents and political veterans. And it interferes with judges' freedom of association, by barring them from soliciting party endorsements and from associating themselves with such endorsements even if they are freely offered.

Unfortunately, the U.S. Supreme Court declined to review the Ninth Circuit's decision that upheld the law.

***Minnesota Voters Alliance, et al. v. Joe Mansky, et al.*, U.S. Supreme Court, in support of certiorari and merits brief (arguing the lower court erred when it ruled a ban on non-campaign messages printed on shirts was constitutional)**

The Institute for Free Speech first urged the Supreme Court to take this case and then, after the Court agreed, we wrote a second brief on the merits of the appeal. In this case, the Eighth Circuit upheld a law prohibiting a voter from wearing a T-shirt that depicted the Gadsden flag, the historic American emblem depicting a coiled rattlesnake and the words, "don't tread on me." Minnesota argued, and the Eighth Circuit agreed, that apparel displaying a political message would cause chaos at the polling place.

While the Court has carved out a very specific First Amendment exception for explicit campaigning at the polling place, we argued that the Court should not extend that exception to general statements of political beliefs. As the brief argued, "[the Supreme Court's] storied precedents have long preserved and celebrated the right of Americans to wear political messages." That includes proud historic symbols like the Gadsden flag.

As explained on page 3, the Court ruled in favor of the First Amendment and struck down the Minnesota law.

***Holland v. Williams*, U.S. District Court, District of Colorado (objections to Motion to Restrict Public Access)**

We filed an amicus brief in this case, which challenges Colorado's system of private enforcement of campaign finance laws (see pp. 37-38). During the litigation, the leading organization prosecuting campaign finance cases asked the court to restrict access to some of the filings in the case. We objected. This amicus brief, filed in conjunction with UCLA law professor Eugene Volokh, explained that we wished to analyze this information and report on it. On August 10, 2018, the court denied the Motion to Restrict Public Access.

***Lozman v. Riviera Beach*, U.S. Supreme Court, merits brief (Does the existence of probable cause defeat a First Amendment retaliatory arrest claim as a matter of law?)**

The City of Riviera Beach had Fane Lozman arrested as he spoke during public comment time at a City Council meeting because, to put it simply, the elected officials didn't like his agitation on eminent domain issues. Mr. Lozman filed a lawsuit seeking damages for a retaliatory arrest, but his claim was denied by the lower courts, which said that if probable cause can be found for the arrest, the claim must be denied.

This was an interesting and critical free speech case. Legendary First Amendment lawyer Floyd Abrams authored the brief for IFS.

Unfortunately, if the government believes it has "probable cause" to arrest you, in several areas of the country, you are out of luck if you sue based on a First Amendment retaliation claim. We believe this is unconstitutional.

As noted on page 3, the Supreme Court ruled in favor of Mr. Lozman and cited our amicus brief in doing so.

***Blagojevich v. United States*, U.S. Supreme Court, in support of certiorari (campaign contribution motivations should not be susceptible to second-guessing under vague and overbroad standards)**

There is a split among the United States courts of appeals on the standard for proving a violation of federal anti-corruption laws. In five circuits, the government must prove there was an "explicit promise or undertaking" to take an official act in exchange for a campaign contribution. That standard is based on the Supreme Court's decision in *McCormick v. United States*. But in three circuits, these courts have said the Supreme Court's ruling in *Evans v. United States* controls. Under that case, the government must prove "only . . . that a public official has obtained a payment . . . knowing that [it] was made in return for official acts."

Our brief argued that *Evans* should not "apply to political contributions, which implicate fundamental First Amendment rights. *Evans* asks the factfinder to apply an unpredictable

and unreliable test about the beliefs of the contributor and candidate. Instead of deciding whether a contributor and candidate actually expressed their willingness to enter into a quid pro quo agreement – an objective test – *Evans* uses a subjective knowledge-based test: the factfinder must determine whether a public official believed a donor made a campaign contribution with the intent to pay the official for official acts."

The brief warns that "application of the *Evans* standard to political contributions raises serious concerns for potential donors, large and small. *Evans* raises the spectre of a potential criminal investigation or prosecution of any political contribution or solicitation whenever the donor might benefit from an official act or legislative position the officeholder or candidate controls. Since, '[s]erving constituents and supporting legislation that will benefit the district and individuals and groups therein is the everyday business of a legislator,' (*McCormick*) expansive application of *Evans* requires a potential donor to carefully consider whether expressing political belief through a contribution is worth the risk of a criminal investigation."

Without clear guidance on the standard used to evaluate contributions, politically-motivated prosecutors would have too much leeway to bring prosecutions against donors and candidates, chilling this vital form of speech.

Unfortunately, the Court declined to review the decision.

***Carpenter v. United States,* U.S. Supreme Court, merits brief (the impact of warrantless government access to cell phone location information on the First Amendment right to free association)**

An example of how the Institute for Free Speech takes a long view to protect free speech is our amicus brief in *Carpenter v. United States*. When it accepted the case in June 2017, the Supreme Court ordered that it would rule "whether the warrantless seizure and search of historical cell phone records revealing the location and movements of a cell phone user" violates the Fourth Amendment. The Institute for Free Speech's brief argued that the answer to that question also has grave implications for the First Amendment.

The technological ability to precisely locate citizens over time – 127 days in Carpenter's case – could allow the government to determine a person's associations with advocacy groups opposing government policies. According to the Electronic Frontier Foundation, cell phone companies "store this data for up to five years."

Without requiring a warrant to obtain this information, the government having this capability threatens the right to free association. In the landmark 1958 case, *NAACP v. Alabama,* the Supreme Court unanimously held that the First Amendment's protections extended to the private gathering of "rank-and-file members to engage in lawful association in support of their common beliefs." The Court stressed the importance of associational rights two decades later in *Buckley v. Valeo,* when it relied on the *NAACP* ruling to narrow

the reach of a campaign finance disclosure statute. In doing so, the Court made plain that "the right of association is a 'basic constitutional freedom.'" The Court ruled that it would give the "closest scrutiny" to "any governmental action which may have the effect of curtailing the freedom to associate."

Requiring a warrant for accessing this information would provide the best check against unreasonable or politically-motivated inquiries into individuals' private associations. The Institute for Free Speech's brief was the only one filed on this vital point.

Work on this brief enabled the Institute for Free Speech to establish new relationships with influential liberal organizations, including the NAACP Legal Defense Fund and Color of Change.

On June 22, 2018, the U.S. Supreme Court ruled for Mr. Carpenter.

***State of Washington v. Grocery Manufacturers Association*, Washington State Court of Appeals, Division II (arguing that an $18 million fine for a minor campaign finance filing error is unconstitutional and chills campaign speech)**

Can a group be fined $18 million for not properly filing campaign finance reports? The Institute for Free Speech's brief said no. Such a massive penalty is unconstitutional under the Eighth Amendment to the Constitution that bars "excessive fines." Such large fines also harm the First Amendment right to free speech.

The case started in 2013 when the Grocery Manufacturers Association (GMA), a national trade group, opposed a ballot measure that would have mandated GMO labeling. To do so, the group contributed to a Washington State ballot committee, and was properly reported as a donor. The funds were fully under the trade group's control, and GMA said it consulted multiple lawyers to ensure it complied with Washington law.

Nevertheless, the State of Washington, pursuing a complaint filed by supporters of the ballot measure, thought the group had acted improperly. The state demanded that GMA file as a political committee and disclose all of its donors. GMA promptly complied, filed the appropriate paperwork, and disclosed all of its contributions and spending involving the Washington ballot measure.

Despite this, the State of Washington sued the trade group. In a shocking decision, Judge Anne Hirsch of the Thurston County Superior Court found that not only was GMA guilty of violating Washington's campaign reporting rules, it also intentionally evaded the law, allowing for the fine to be tripled. The court fined GMA an unprecedented $18 million.

Such a decision, were it to stand, would have incalculable First Amendment harms. As the Institute for Free Speech's brief noted, "the Superior Court has imposed a massive fine – a

death sentence for most groups – with tremendous potential to chill specially protected speech. That decision was in error and should be reversed."

Fines of this severity are only reasonable to punish truly reprehensible conduct. Even if one fully supports Washington's broad disclosure laws, this mammoth penalty "for a reporting violation … has no place in the context of core First Amendment activity, where 'it is our law and our tradition that more speech, not less, is the governing rule.'"

The case is still pending.

Coloradans for a Better Future v. Campaign Integrity Watchdog, LLC, **Colorado Supreme Court (arguing that pro bono legal work on litigation to defend constitutional rights should not be counted as a campaign contribution)**

A lower court ruling counted pro bono legal work as a campaign "contribution," which creates several important problems. It would create filings that would imply that attorneys providing pro bono help support their clients' political views. Additionally, since Colorado has very low contribution limits, hardly any meaningful legal work could be done to defend a committee's constitutional rights. Our brief urged reconsideration of the ruling. In a victory for free speech, on January 29, 2018, the Colorado Supreme Court agreed with our brief that pro bono legal work is not a campaign contribution.

Holland v. Williams, **District Court for the District of Colorado (arguing that Colorado's private enforcement of campaign finance law is unconstitutional)**

Here are some excerpts from the brief:

> Colorado law authorizes private citizens to bring campaign finance enforcement actions. Anyone – including a speaker's political opponents – can allege a violation and trigger the adjudicative process; Colorado's Secretary of State is legally obligated to forward these private complaints for legal proceedings. Thus, anyone can force a speaker into an administrative proceeding, with all the accompanying time, effort, worry, and expense, simply by filing a complaint.
>
> The Supreme Court has recognized that even substantively constitutional speech restrictions are unconstitutional when their enforcement procedures unnecessarily burden protected speech. Federal judges have specifically applied this general rule to private enforcement provisions burdening speech. And the logic of those arguments equally applies to Colorado's private enforcement scheme for campaign finance violations.
>
> Consider, for instance, the experience of plaintiff Tammy Holland. Holland bought ads in a local newspaper urging members of her community to educate themselves about all the candidates running in an upcoming school board election. In

> retaliation, the superintendent of the school district filed a complaint alleging that Holland violated campaign finance law by failing to register as a political committee or include disclaimers on her ads. Holland was forced to hire an attorney and prepare her defense, but at the last minute, the superintendent withdrew his complaint.
>
> But that did not end her ordeal. After Holland requested attorneys' fees from the school district, another sitting school official retaliated a second time by refiling the initial complaint. Colorado's private enforcement system thus allowed two public officials, who disliked Holland's speech, to generate an enforcement proceeding against Holland and force her to spend time, money, and effort defending her speech….
>
> The Colorado system lets a speaker's ideological opponents wage political battles in the courts rather than in the political arena. It thus tends to chill political speech, potentially frightening individual speakers and small-scale grass roots campaigns away from the political process. And it does so unnecessarily: other states, which use the traditional model of leaving prosecutors (criminal or administrative) with the decision whether to initiate a proceeding, are able to enforce their election laws without such a speech-deterring enforcement system.

On June 12, 2018, U.S. District Court Judge Raymond Moore ruled that Colorado's system of private enforcement of campaign finance laws was unconstitutional.

***Public Citizen v. Federal Election Commission*, U.S. District Court for the District of Columbia (arguing the court should defer to the findings of the three FEC Commissioners concerning a political committee status determination)**

Public Citizen filed a complaint alleging that Crossroads GPS, a social welfare group organized under Section 501(c)(4) of the Internal Revenue Code, had conducted enough political activity to become a political committee under the Federal Election Campaign Act. After the FEC dismissed the complaint, Public Citizen filed this lawsuit, arguing that the dismissal was "contrary to law."

Our brief agrees with the FEC that "extensive precedent that the decision of the 3 Commissioners voting not to proceed is entitled to full *Chevron* deference because those Commissioners constitute the controlling group preventing an investigation from proceeding." The "traditional administrative law rubric, however, ignores certain aspects of the Act that in fact support an even more deferential approach to Commission decisions (including evenly split [3-3] decisions) to refrain from exercising its powers."

The brief goes on to note that "[t]here is good reason to have both an evenly divided bi-partisan Commission and a requirement that ties go to the accused rather than the accuser. Campaign finance regulation poses a heightened danger that complaints will be used for

partisan advantage to silence or hamper a political opponent. Allowing either party to bring the weight of the Commission down on a speaker without bi-partisan support is an invitation for abuse. The requirement of 4 votes to initiate an investigation is an important safeguard against such abuse."

Later, the brief says that First Amendment "concerns rightly place a heavier burden on the Commission when it seeks to burden, punish, or restrict election speakers and conversely provide ample inherent support for Commission decisions declining to so impinge on free speech and association. The asymmetrical First Amendment impact of decisions to proceed or not proceed with investigations is entirely consistent with the asymmetrical voting requirements for proceeding (4 votes) or not proceeding (3 votes)."

"In short," the brief concludes, "the history and structure of our limited government places a significant thumb on the scale favoring inaction over action. Even where, as here, Congress has expressly provided for limited review of a Commission decision to take no further action on a complaint, the historical thumb limiting government action supports keeping such review in this case narrowly confined and not implying greater powers of review that would effectively turn this Court into a tie-breaking vote."

The case is still pending.

External Relations Detail

Select Legislative Testimony and Analysis

- Invited Testimony on Draft Legislation Before the Idaho Campaign Finance Reform Interim Committee (Nonprofit Donor Disclosure)
- Invited Testimony on Michigan H.B. 1176, the "Personal Privacy Protection Act" (Prohibiting Nonprofit Donor Disclosure Rulemakings/Regulatory Actions)
- Analysis of the "DISCLOSE Act of 2018" (S. 3150): New Bill, Same Plan to Crack Down on Speech (Nonprofit Donor Disclosure)
- Analysis of Maryland "Online Electioneering Transparency and Accountability Act" (Internet Speech Regulation)
- Analysis of November 2018 North Dakota Campaign Finance/Lobbying Initiated Constitutional Amendment ("True Source" Disclosure)
- Analysis of Oregon H.B. 4076 (Taxpayer-Financed Campaigns)
- First Amendment Analysis: South Dakota Ballot Measures (Enforcement and State Ballot Measure Committee Contribution Ban on Out-of-State Speakers)
- Analysis of Washington H.B. 2455 and S.B. 5991 (Nonprofit Donor Disclosure)
- Letter in Support of H.R. 4916, "Preventing IRS Abuse and Protecting Free Speech Act" (Schedule B Elimination)
- Coalition Letter to Attorney General Sessions (Political Bias and Antitrust Actions)

Select Regulatory Testimony and Comments

- Testimony of Allen Dickerson at Federal Election Commission Public Hearing on Internet Communication Disclaimers and Definition of "Public Communication"
- Testimony of Allen Dickerson to the Massachusetts Office of Campaign and Political Finance on "Campaign Finance Activity" Rulemaking
- Petition for Rulemaking to FEC to Revise 11 C.F.R. § 100.52 (Definition of "Contribution")
- Analysis of Oklahoma Ethics Commission Amendment 2019-02 (Disclosures for Communications Advocating for or Against Pending Legislation)
- Comments to FEC on Notice 2018-06 (Proposed Rulemaking on Internet Communication Disclaimers and the Definition of "Public Communication")
- Comments to FEC on Notice 2018-05 (Rulemaking Petition Concerning Former Candidates' Personal Use)
- Comments to FEC on Rulemaking 2014-02 (Independent Expenditure Reporting)
- Comments to FEC on Potential Rulemaking on Internet Communications Disclaimers
- Comments to National Park Service on Proposed Rule Regarding Demonstrations and Special Events in the National Capital Region, 83 Fed. Reg. 40460