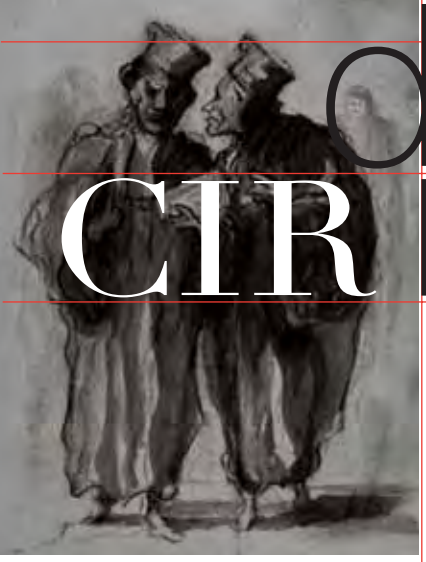

CIR docket report

Fall 2011

IN THIS ISSUE

Obamascare

Florida v. HHS

There has been some good news of late in the national fight against Obamacare: the Eleventh Circuit Court of Appeals just struck down the central pillar of that law, the so-called "individual mandate." The implications are momentous: since another Court of Appeals already had upheld the law's requirement that citizens must buy health insurance, the Eleventh Circuit's decision creates a "circuit split" that makes a Supreme Court showdown on Obamacare's unconstitutionality inevitable.

If the Obama Administration is starting to get scared at this point, it's understandable; an ultimate defeat in this case—one that would bring its signature "achievement" crashing down—just got that much more likely. For our part, we can be proud that both a prior CIR case and the *amicus* brief we filed in this case have played an unusually important role so far in the battle against this gargantuan, overreaching law.

Earlier in the case, in January 2011, Federal Judge Roger Vinson of the Northern District of Florida struck down Obamacare on the ground that it went beyond regulating interstate commerce, and instead required individuals to *enter* interstate commerce by purchasing health insurance. Judge Vinson carefully explained why forcing people to engage in a particular commercial activity is *not* within the enumerated powers granted to Congress. To support his analysis, Vinson relied in great part on a 2000 CIR Supreme Court victory, *U.S. v. Morrison,* one of the first cases in which anyone successfully challenged Congress's expansive view of its power under the Commerce Clause.

On appeal, the Eleventh Circuit relied even more heavily on *Morrison,* citing CIR's victory no less than 89 times. In an opinion by Chief Judge Joel Dubina, the Court reasoned that if the Commerce Clause allowed Congress to force people to buy a given good or service simply because their current decisions *not* to buy it affected interstate commerce, then Congress would have the power to regulate virtually any behavior of individuals, and the careful enumeration of Congress's powers in the Constitution would be a dead letter.

Chief Judge Dubina's opinion went to the heart of this case: limiting Congress's powers to certain enumerated areas is not simply a formality. Rather, it serves a vital purpose: protecting individual liberty. And indeed, if the Commerce Clause is interpreted to mean that Congress can regulate *anything,* the enumeration of powers becomes meaningless, and the federal government has usurped what amounts to a general police power.

The government has arguments in reply, of course. One of the principal ones is that the individual mandate is really a regulation of a particular course of economic conduct. According to the government, healthy people who don't buy health insurance make that decision to save money, and intend to buy health insurance later, when they need it. Since the motivation for this "freeloading" strategy is economic, the government argues, the individual mandate that forecloses it actually is a regulation of economic activity.

But the problem with this argument is that individuals have *many* reasons for not buying health insur-

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ance, only some of which are economic. CIR's *amicus* brief in the case addressed exactly this point, and the Court made much of our argument that Obamacare is an overbroad restriction on noneconomic behavior. We pointed out that while some individuals may decide not to purchase health insurance for economic reasons (for example, to get free healthcare down the road) many other individuals may forego health insurance for reasons having nothing to do with economics. As we noted in our brief, such reasons might include "the belief that insurance might cause them to engage in unnecessarily risky behavior or to overuse medical services, or to waste excessive time haggling over coverage."

This is more than a theoretical speculation: among those eligible for Medicaid, only 62% have applied for benefits. In other words, individuals avoid the use of health insurance even when it is free. As Michael Carvin, counsel for the private plaintiffs (see page 10), put it at the oral argument, such lack of fit between a regulation and what the Constitution allows to be regulated isn't even "good enough for government work." The Court echoed this concern in its opinion:

> *[T]he individual mandate is breathtaking in its expansive scope. It regulates those who have not entered the health care market at all. It regulates those who have entered the health care market, but have not entered the insurance market (and have no intention of doing so)…. The government's position amounts to an argument that the mere fact of an individual's existence substantially affects interstate commerce, and therefore Congress may regulate them at every point of their life.*

While we got a lot of mileage at the Eleventh Circuit by challenging the overbreadth of the individual mandate, the government has other arguments that could be more difficult to handle at the Supreme Court. For example, the Court has recognized the authority of Congress to regulate noneconomic activity when doing so is incidental to a comprehensive effort to regulate activities clearly part of interstate commerce. Obamacare being the mother of all comprehensive regulatory schemes, the Supreme Court just may decide that the individual mandate's regulation of noneconomic inactivity is incidental to the scheme's larger parts.

Speaking of being scared, this stronger argument for Obamacare should send chills down the spine of any freedom-loving person. Because it means that the more grandiose the regulatory scheme, the more likely is it to survive Supreme Court review. CIR's aim is to assist the Supreme Court in drawing back from this approach, which, by treating individual Americans' basic freedom to be left alone as "incidental," would eviscerate the entire purpose of a limited national government. ~

> *"If the Commerce Clause is interpreted to mean that Congress can regulate anything, the enumeration of powers becomes meaningless, and the federal government has usurped what amounts to a general police power."*

Back in the Game

LaRoque v. Holder

Just recently, CIR enjoyed a major reversal of fortune in *LaRoque v. Holder,* our historic voting rights challenge. In December, a federal district court had dismissed our entire case for lack of standing. But this summer, on an expedited appeal, the U.S. Court of Appeals for the District of Columbia Circuit (a mere step below the Supreme Court) overruled the lower court's decision and instructed it to consider our constitutional arguments on their merits.

CIR client Stephen LaRoque explains LaRoque v. Holder *to the press.*

In *LaRoque,* CIR is challenging Section 5 of the Voting Rights Act, a federal statute that requires states to maximize the voting strength of some races in "covered" jurisdictions. The facts of the case make clear the danger posed by a government program that has long outstripped its original purpose and now weakens the foundations of our representative democracy by injecting the mingled acids of race and political partisanship into voting procedures.

With the integrity of that democracy very much in mind—and the appellate ruling in hand—one of our aims now is speed. You see, the newest census results will be used to draw congressional districts before the 2012 elections, and we seek to disable the Justice Department from requiring that decisions in that process be race-based. Accordingly, we will press the trial judge to grant the motion for summary judgment that we made last summer. If he denies our motion, we will appeal the case back to the Court of Appeals for the D.C. Circuit. We will ask the Appeals Court to grant expedited consideration in light of the public interest in getting the case to the Supreme Court and settling the constitutional question before the 2012 elections.

Whenever it happens, a Supreme Court ruling in this case would be big news. First, the facts in *LaRoque* lay bare the politicized nature of the Section 5 preclearance standard as amended by Congress in 2006. Whereas Section 5 preclearance used to be granted as long as a proposed change or election district did not impede minority access to the polls, now the law requires that any voting change maximize the ability of minority voters to elect their "candidate of choice." In other words, a statute that once guaranteed non-discrimination in access to voting now requires race-specific outcomes.

Just as disturbingly, requiring states and localities to favor the choices of minority voters has partisan political overtones, as the facts of the *LaRoque* case make painfully clear. Despite the fact that Kinston, North Carolina, is 63% minority, and that voters there passed a referendum in 2008 to convert to nonpartisan voting by a two-to-one margin, the Justice Department refused to preclear the nonpartisan voting system. The reason was that officials determined that minority candidates got a boost from the Democratic Party label. In other words, a Democratic administration in Washington is using the Voting Rights Act to perpetuate and strengthen the Democratic Party apparatus in the covered states over the express wishes of the voters—including minority voters whose interests were supposed to be protected by the Voting Rights Act.

Indeed, *LaRoque v. Holder* is designed to get the federal government out of the business of micromanaging local election procedures not only for racial but also for partisan political ends. While there may be no way to remove partisan politics from our national life, at the very least such a system should not be imposed on unwilling localities by a distant federal government tending the national political machine of its officeholders. ~

The Big One

U.S. v. New York City Dept. of Education

As those involved in CIR's New York City school building superintendents case can attest, it's definitely big. It's also long (we've been litigating it since 1999). But the payoff from such original litigation can be huge, too. And, in fact, we recently got an exceptionally strong decision in this case. The ruling fundamentally alters the playing field on which employers must respond to hyped-up job discrimination complaints that are based on nothing more than statistical "disparities" in hiring and promotion.

As may be recalled, CIR represents a group of mostly white, male school building superintendents who are challenging a consent decree entered into by the Clinton Justice Department and their employer, the New York City Department of Education. The case began when, after a highly-publicized discrimination investigation and subsequent lawsuit by the Justice Department, the City reached a quick agreement with the federal authorities: to hire a slew of women and minorities as superintendents without the usual requirement that they first pass a civil service exam, and then grant them "retroactive seniority." These actions, of course, lessened the relative seniority of every other superintendent.

The superintendents we represent intervened in this cozy arrangement and challenged the agreement. Then groups of women and minority beneficiaries of the agreement intervened, too, represented, respectively, by the ACLU Women's Rights Project and the NAACP Legal Defense Fund. The case was fought tooth and nail in the federal district court, which at length issued a 91-page ruling that represented a modest victory for CIR. The court's judgment was appealed by all sides to the Second Circuit Court of Appeals.

And late this spring, the Second Circuit ruled in our favor. The major holding in the appellate court's 137-page decision, simply put, is that an employer no longer may settle a noisy discrimination complaint by simply giving minority employees preferences—even if the Justice Department has been breathing down its neck. Instead, it must have a "strong basis in evidence" that there actually was illegal discrimination *and* that the beneficiaries were themselves the victims of that discrimination.

If these points seem obvious, it's because they are. But they are also vital. Before this decision, the cards were stacked in a completely different way. Under pressure from Congress to get more results in the "civil rights" area, the Justice Department had found the perfect system to create race preferences without having to go to trial and actually prove past discrimination: simply bring a lawsuit against an employer in whose workforce it could find statistical "disparities." The employers, concerned about liability and bad publicity, would take the path of least resistance and settle the case by agreeing to institute preferences.

Two years ago, the Supreme Court took a swipe at this problem in *Ricci v. DeStefano*, when it ruled that the City of New Haven could not discard the results of a firefighters' exam just because it produced the "wrong" racial result. The Court held that the City had to have a "strong basis in evidence" that the numerical disparity was the result of unlawful discrimination before it penalized the successful test takers by discarding the exam.

"An employer no longer may settle a noisy discrimination complaint by simply giving minority employees preferences—even if the Justice Department has been breathing down its neck."

Overnight, CIR's New York City case became *the* test case to determine what should happen to a much wider swath of race-based workplace "remedies" instituted by businesses or government employers under pressure from advocacy groups or the Justice Department.

Our mammoth, multifaceted case is close to ideal for that purpose: whereas the *Ricci* case involved only the cancellation of an exam, the New York case is about giving retroactive seniority to minority and women custodians. So the harm to nonminority employees is considerably broader than having test results thrown out: it also includes missed promotions, lost transfers, and other diminished benefits long into the future. And ironically enough, these effects are suffered not only by nonminority superintendents, but also by existing *minority* employees unfortunate enough to have been hired the old-fashioned way, by passing a race-blind civil service exam.

All this meant we had a major opportunity to set a new precedent, one that fundamentally reorders the incentive structure set by Congress and the courts. And this decision delivers. Because it was authored by one of the Court's more liberal judges, it cannot be viewed as a "right-wing" decision destined to be overturned. The ruling is nothing less than a disaster for the left, for it puts the kibosh on the system that for decades now has turned workplace "disparities" into intentional racial preferences.

CIR cases change the rules of the game in a fundamental way by tilting legal incentives in *favor* of individual rights and *against* expansive state power. While the individual building superintendents we represent will certainly benefit from our victory so far, the real value of that victory is the way it permanently reorders relations between employers and the government. The Second Circuit's decision will strongly deter feckless decisions by employers to settle politicized claims of "discrimination" by the handy device of committing real and intentional discrimination against their existing employees. ~

Press Record, Go to Jail

Vera v. O'Keefe

CIR's representation of citizen filmmaker James O'Keefe (who has been busy lately, see page 8) heated up this spring, when we challenged a draconian California anti-recording law that his opponents made the basis for the latest in the long line of legal actions against him. Unfortunately, the federal judge hearing the case denied our motion to strike down California's anti-recording law and thus dismiss the case at the outset. Still, we have a strong basis for appeal (should that become necessary) and have laid the groundwork for solidly establishing a crucial First Amendment right.

As may be recalled, one particular installment of the anti-ACORN videos by O'Keefe and sidekick Hannah Giles—the ones that brought down that huge, federally-funded anti-poverty agency—was made in ACORN's San Diego office. It included lengthy conversations with an ACORN employee named Juan Carlos Vera. As O'Keefe played the role of "pimp" to Giles's scantily-clad "prostitute," Vera is shown counseling the pair about their feigned plan to smuggle illegal, underage "sex workers" over the Mexican border and open a brothel.

After this—almost a year later—*Vera* filed a lawsuit against *O'Keefe*. The basis of his suit under California law is quite technical. He does not claim he was caught in any sort of personal or private moment; rather, it is clear he was speaking on the video as a representative of ACORN whose job it was to communicate with members of the public who sought the assistance or advice of that organization.

But under California law, that doesn't matter. You see, Vera claims that O'Keefe had videotaped his conversations with him without his consent in violation of that state's anti-tape recording statute. Under this law consent must be obtained from all "parties" to a "confidential communication" before it may be recorded, under pain of harsh civil and criminal penalties—including jail for a year (that's just for the first offense).

Whatever the original merits of this law, we discovered that in the hands of the Supreme Court of California it has turned into something truly

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O'Keefe codefendant Hannah Giles (in her role as a "prostitute") talking with plaintiff Juan Carlos Vera (offscreen)

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extreme. Because of a 2002 decision in which that court construed the law, it now bans any participant in a conversation from recording it if any other participant reasonably believes the conversation is not being overheard or recorded. And it does so even if all of the participants fully understand that any of them may repeat what was said in the conversation freely, even to the public at large. In short, after the court got through with it, this law bans people from recording their own conversations even if those conversations are the very opposite of "confidential."

For example, this law makes criminals out of motorists who use their cell phones to record what a police officer says to them at a roadside traffic stop. Provided there is no one else within earshot, it is reasonable for an officer at such a stop to believe he is not being overheard or recorded, and that is all it takes to make the conversation "confidential" under California law. At the very least, since arrest and jail-time might well result, precious few California motorists will choose to make such recordings, or choose, for that matter, to record what any other public officials say to them (at least when the conversation isn't being overheard by others). And this isn't just a problem in California; arrests and prosecutions under similar laws for recording public officials

Uneasy Rider

Victims of over-the-top enforcement of state anti-recording statutes are popping up all over. One of them is Maryland resident Anthony Graber.

An avid motorcyclist, Graber was pulled over for a traffic ticket last spring on I-95 in Maryland. Because Graber had a small camera running on his helmet to record the ride, he captured on video the ensuing confrontation. A tense-looking, civvies-wearing police officer, after jumping out of his unmarked car and before bothering to identify himself, charged up to Graber with his gun pointed at him and yelled, "Get off the motorcycle! Get off the motorcycle!" (Graber thought the man might be trying to steal his bike.)

When a miffed Graber posted his video on YouTube, authorities were able to use Maryland's anti-recording law to teach him a lesson about what speech was free and what was not in the "Free State." Staging an early-morning raid on Graber's home, police held him and his parents for an hour and a half and confiscated his computers; later they arrested him and took him to jail. He was charged with two felonies (carrying sixteen years in jail) for producing his candid memorialization of the way one public official did his duty on a public highway.

Fortunately for Graber, the trial court dismissed the case against him on the ground that a police officer at a traffic stop lacks a "reasonable expectation of privacy," and thus Graber did not violate the statute.

Privacy in the Court!

Michael Allison, a resident of Bridgeport in southeastern Illinois, was unaware of that state's draconian anti-recording statute until he ran afoul of it in a manner that approaches the surreal.

Allison's trajectory ending in collision with this law started with his hobby of fixing up cars. A local ordinance meant that he could not park them on his own property outside of a garage unless he registered and paid insurance on each one. Regarding this law as an illegal scheme to raise revenue through impound fees, he repeatedly violated it, and his cars were repeatedly impounded.

One day, as he worked on an unregistered car in his mother's driveway, the police arrived and wrote him a citation. Allison recorded this conversation with the police officers without concealing that he was doing so. And later, a day before his court date on the citation, Allison went to the courthouse and showed the court clerk his tape recorder (which wasn't running) and requested that his hearing the next day be transcribed by a court reporter. The clerk denied his request.

When Allison went into court the next day, one of the first things the judge asked him was whether he had a tape recorder in his pocket. Assuming he was within his rights, Allison said he did, and also replied in the affirmative when the judge asked him if it was on. The judge then told him he was violating Illinois' anti-recording statute, and claimed, "You violated my right to privacy." So after finding him guilty of breaking the eyesore ordinance, the judge threw Allison in jail on five counts of "wiretapping." The total possible jail time he currently faces is 75 years.

The privacy-loving judge was technically right, at least about state law. The one in Illinois is particularly extreme; since being amended in 1994 it bans the recording of any conversation without the consent of all "parties" to it. Ridiculously, the law even applies to the recording of conversations that take place in public and are overheard by crowds of people.

Allison has refused to take a plea bargain and his case is pending.

are on the rise across the country (for a couple of examples, see the inserts on this and the facing page).

It is the "chilling effect" this law has on the exercise of free speech rights that is the legal basis of our constitutional challenge on behalf of O'Keefe. In the lingo of constitutional jurisprudence, it's called an "overbreadth challenge." In the San Diego federal district court, we first argued that tape recording one's own conversation with a public official performing his public duties in public is, indeed, a right protected in the First Amendment. We then argued that because California's law "chills" or discourages the exercise of this right with threats of jail, the law should be struck down as overbroad, and the suit against O'Keefe dismissed.

The judge disagreed, and in a cryptic, summary fashion denied our motion. And though he did not seem to deny that recording public officials is a constitutional right, we can say little about the underlying reasoning for his ruling, for the simple reason that he offered very little explanation for it.

Of course, we can't predict for certain what will happen later in the case or on appeal, or even whether we will need to appeal (after all, Vera's suit may be resolved in O'Keefe's favor on some basis other than the unconstitutionality of the anti-recording law). Still, eventually, in this age when anyone can record sound easily, the Supreme Court seems bound to rule on whether and how much the repressive anti-recording statutes that dot the country run afoul of the First Amendment. And because we represent O'Keefe—a real litigant with a real and continuing interest in these matters—we are unusually well-placed to press for such a ruling.

In our view, it's high time for a resounding, nationwide precedent in this area, one that explicates the full meaning of the First Amendment and protects the proper use of new technology to bring vital information to the public—especially if that information comes from citizens exercising their right to monitor public officials. ~

Teachable Moment

"Once you get that third year, it's like… *schwing*!"

Alt filmmaker and CIR client James O'Keefe has been making some headlines again lately. Most recently, it has been with his highly-effective exposés of Medicaid fraud and, before that, left-wing political bias at (of all places) National Public Radio. But the above, vividly colloquial words were not uttered by a Tea Party-trashing NPR executive; rather, they were spoken by a New Jersey public school teacher in a video O'Keefe had posted a few months before. This video about teachers unions received wide notice of its own—and because of the deeply threatening nature of the problem it illustrates, it might end up being one of his more consequential efforts.

The *schwing*-in' teacher quoted above was referring, of course, to that most liberating of benefits her union had won through collective bargaining: tenure for teachers after only three years. She illustrated her point with an interesting story: a fellow tenured teacher called a student by a distasteful and incendiary racial epithet—a *major* no-no, one might think, especially in a state as liberal as New Jersey. Eventually that teacher was demoted, but, "he's still teaching!" she said. It's those awesome job protections the union negotiated, you see—the guy just couldn't be fired. Unbeknownst to the teacher, she was speaking to a video camera on the person of one of O'Keefe's citizen-volunteer infiltrators of 2010's New Jersey Education Association Conference, held at a lavish hotel.

On O'Keefe's video, the conferees also are heard engaging in hate speech (in the form of chanted doggerel) against Governor Chris Christie. Perhaps guessing how the union members in the video (and he) would look to the average voter, the governor later told a reporter, "If you need an example of what I've been talking about for the last nine months—about how the teachers union leadership is out of touch with the people and out of control—*go watch this video.*" He then formally thanked the conferees for chanting off-color hate-doggerel aimed at him.

Blogger Mickey Kaus has argued that public employee unionization makes for both poor government services and (in fairly short order) bankrupt governments. We're not a public-policy shop, but that sounds plausible to us. If government is big (as, of course, it is), and if the hordes of public employees become impossible to fire, retire early, and get generous pensions, why then, craptastic government services and public bankruptcy both seem just about inevitable.

In one way, O'Keefe's video was a tad lame. Everyone already knew unionized public school teachers are impossible to fire. But this knowledge was merely abstract, and that is usually not enough to get things moving in a country where, often, an aroused public opinion is the only thing that will block destructive agendas imposed from above. For example, Republicans did little or nothing with this abstract belief in teachers-union depravity in the years of their power. Maybe that was because audio-visual exposés on the problem by the mainstream media were not exactly flooding the airwaves.

By contrast, in New Jersey and beyond, O'Keefe's video (which was linked to on the *Drudge Report*) helped spark and spread a *real* belief that teachers unions are a *real* problem. In so doing, it has strengthened the hand of the forces across the country that are taking them on.

According to reports, both the teacher quoted above and the union are contemplating legal action against O'Keefe. We wonder on what

*"The governor later told a reporter, 'If you need an example of what I've been talking about for the last nine months—about how the teachers union leadership is out of touch with the people and out of control—*go watch this video.*'"*

grounds (New Jersey lacks an anti-recording statute as extreme as, say, California's). Grounds or no grounds, their threats show the continued, even intensified, need for the courts to recognize the true strength and scope of the First Amendment. These days, when "real journalists" confine themselves to copying and pasting each other's talking points, and when even conservative politicians are trapped, or trap themselves, in the conversation the mainstream press controls, the kind of investigations the O'Keefes of this world undertake definitely have a place. How big that place will turn out to be we can't say for sure, but if the recent sting videos in Planned Parenthood offices by O'Keefe protégé Lila Rose—as well as all the other recent capers by O'Keefe's own outfit—are a good guide, it seems there's a vital industry aborning. Our goal in our representation of O'Keefe and other brave citizen journalists is to make sure the First Amendment is held strong enough to keep the power of the state from crushing it in its crib. ~

Lawyers Against Overlawyering

Wolk v. Frank

When crusading attorney Ted Frank posted a blog entry on a legal reform website, he had no way of knowing that one day another lawyer—a big shot in his field—would launch a baseless, delayed-action lawsuit against him to punish him for his public-spirited work. But when that happened, CIR took on Frank's defense to protect his vital First Amendment right to speak freely about the actions of a public figure.

At present, Frank devotes himself to the public legal service of objecting to and breaking up abusive class-action settlements. You probably know the kind—where each member of the aggrieved class gets a check from Colgate-Palmolive or whatever for $3.75, or some similar token amount, and the lawyers "representing" them pocket gazillions in attorneys' fees. Representing disgruntled class members *pro bono,* Frank has been increasingly successful in getting bad settlements thrown out of court.

As might be expected, Frank's exploits have not made him popular with the plaintiffs', or the class-action, bar. And one extremely prominent airplane-crash victims' attorney, Arthur Alan Wolk, has even gone after him in a libel suit.

You see, a few years ago Frank was a contributor to Overlawyered.com, a website dedicated to exposing abuses in the legal system. On it, based on certain facts in the record of a case Wolk was involved in, he noted a possible conflict-of-interest issue involving Wolk and questioned whether the judge in the case had looked into that issue adequately before signing off on the settlement.

"Libel!" screamed Wolk, when (he says) he first learned of the article two years later. He haled Frank into a Pennsylvania court, demanding compensation for the "enormous" economic injuries he claims the article caused him.

To try to get around Pennsylvania's one-year statute of limitations for libel actions, Wolk also argued that he brought the suit so late because he wasn't on notice the article existed until he attended a continuing legal education class in which the instructors helpfully advised him to Google himself. The district judge rejected this argument and threw his suit out, but Wolk is making the same argument again on appeal to the Third Circuit Court of Appeals.

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One of the good ones: lawyer and CIR client Ted Frank

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At stake in Wolk's argument is the crucial question of whether articles on websites count as "real journalism." That is to say, should the web be treated differently from traditional media when it comes to determining when the statute of limitations begins to run? For our part, we resist any outcome that would make those who write articles on the internet—*at the moment* the freest medium in existence—vulnerable to libel suits for a much longer period than mainstream journalists have to worry about. The last thing the country needs is for the internet to turn into a tame criticism-free zone. But even if the Third Circuit disagrees and revives Wolk's suit, we are prepared to point out that Frank's article constitutes speech about a matter of public concern and is fully protected by the First Amendment.

The overarching threat Wolk's attack poses is this: by bringing suits of this kind, however meritless, major public figures like Wolk make it difficult even to question their actions. After all, no one wants the bother and expense of being sued, even frivolously. Most will refrain from speaking rather than take that risk.

If Wolk wins, others with cynical motives will follow in his footsteps, and powerful individuals or groups will be able to abuse the judicial process to silence their critics. To discourage such tactics, by teaching their futility, what is needed is what CIR provides here: boots on the ground. And if we can achieve a new legal precedent strengthening free speech on the crucial medium of the internet—well, obviously, that's even better. ~

A Man for All Lawsuits

Michael Carvin is proof that not all Washington lawyers are sappers of the public interest misdirecting national policy on behalf of special interests with deep pockets. (Really, not all D.C. lawyers are like that—it's just that ninety-nine percent or so.) A former Justice Department official in the Reagan Administration and now a partner at Jones Day, Mike puts his plentiful brain-matter to better uses: he specializes in suing the federal government. And given the size and resources of his opponent, his high win-loss ratio in these endeavors is all the more impressive.

Mike graduated from Tulane University in 1978 and received his law degree from The George Washington University in 1982. After that he held senior positions in the Justice Department under President Reagan before entering private practice. He has argued before the U.S. Supreme Court many times, and before almost every federal appellate court. Mike also was one of the lead lawyers, and argued before the Florida Supreme Court, on behalf of George W. Bush in the 2000 election Florida recount controversy. A bit later, the U.S. Supreme Court even called the Florida Supreme Court "irrational" for disagreeing with him.

LaRoque v. Holder *lead counsel Michael Carvin*

An erstwhile CIR board member, Mike has teamed up with us a number of times through the years. The first was in *Reno v. Bossier Parish,* where he led our successful fight to make it harder for the government to create "majority-minority" congressional districts. Next came the case against the Public Company Accounting Oversight Board (PCAOB, or "Peekaboo"), a Carvin-initiated project that we assisted with through an *amicus* brief in the Supreme Court. The Court's opinion in that case cut that hugely powerful agency down to constitutional size. Currently, Mike is lead counsel (with the assistance of Hashim Mooppan, also of Jones Day) in CIR's effort to overturn Section 5 of the Voting Rights Act (see page 3), and also counsel for the private plaintiffs in the *Florida v. HHS* challenge to Obamacare (see page 1). In all of his CIR cases, Mike donates his highly-valued time *pro bono.* And for that we, and constitutionalists everywhere, have every reason to be thankful. ~

Summering at CIR

Each summer, CIR enjoys the help of several law clerks and summer interns. CIR's high intensity litigation offers law students an unparalleled opportunity both to gain valuable hands-on experience with some of the best and most experienced litigators around and to participate in groundbreaking cases like *LaRoque v. Holder* and *Vera v. O'Keefe.*

Last summer and fall, CIR benefited from the summer public interest program of Steptoe and Johnson LLP, which lent us the services of their summer associate Jessica Rothschild. After completing eight weeks at Steptoe, Jessica came to CIR to spend five weeks learning about the nonprofit legal world and gain experience in First Amendment and civil rights litigation. Having taken a course in voting rights law, Jessica was extremely interested in *LaRoque v. Holder.*

Jessica, a third year at Stanford Law School, is a graduate of Amherst College, where she triple majored in political science, psychology, and computer science. While at Amherst, Jessica served in student government, started an annual Holocaust remembrance program, and served a turn as the college mascot, "Lord Jeff." After college, she worked for an international nonprofit organization in Jerusalem and then on a political campaign in Tennessee. Jessica is a Notes Editor for the *Stanford Law Review*, co-president of the Jewish Law Students Association, and a public interest fellow at the law school.

And this summer, CIR benefitted from the services of Yale Law School rising "2L" Christopher Nicholson and University of Chicago Law School rising "2L" Richard Hanania. Chris and Rich worked closely with CIR's General Counsel Michael Rosman and other attorneys on CIR's landmark litigation to combat a discriminatory settlement agreement entered into by the New York City Board of Education.

Chris is a *summa cum laude* political science and philosophy graduate of the University of Alabama, where he was awarded a four-year Presidential Scholarship, was in the Phi Beta Kappa Honor Society, received the Iredell Jenkins Endowed Memorial Scholarship, and was the winner of the Ten Hoor Prize. While at Alabama, Chris was a teaching assistant in the philosophy department and was a contributing author to *Marr's Field Journal*. At Yale Law, he is active in the Federalist Society and is an editor on the *Yale Law and Policy Review.*

Rich graduated with a B.A. in Linguistics and a minor in Russian from the University of Colorado at Boulder. He taught English while participating in a language program in St. Petersburg, Russia, and was a co-author of the teaching aide "Conflicts in Chechnya." At the University of Chicago Law School, Rich is active in the law and business association Law Inc., the Law and Economics Society, and the Federalist Society for Law and Public Policy Studies. ~

Richard Hanania *Christopher Nicholson* *Jessica Rothschild*

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