

DOCKET REPORT

Our latest legal moves



Still crazy after 35 years!



CIR sounded crazy when we opened shop 35 years ago this spring. CIR's founders had an audacious plan to reverse a half century of progressive, government-expanding precedents. Many back then had made peace with the New Deal and thought it was a fool's errand to fight to end race preferences, to reimpose constitutional limits on federal power, and to protect free speech, especially on college campuses. But as crazy as CIR's plan sounded, even crazier was that it worked—over and over.

With three and a half decades of incredible victories, including numerous Supreme Court wins, we're celebrating in style. You are cordially invited to our 35th anniversary bash in DC (page 8). We also revised CIR's logo and *Docket Report* design, but those surface

changes mark deeper, exciting developments. We're growing rapidly and setting goals that are more ambitious than ever before.

Yet, in many ways, CIR's position still harkens back to our beginning. *Some* government abuses have been trimmed, but others have arisen. Small ball challenges won't fix that. Big swings are needed to restore enduring limits on government powers and protect individual rights. Luckily, more courts today are open to our type of bold constitutional challenges than in CIR's early days.

CIR is seizing this opportunity to bring big-picture, structural reform cases to change how government operates. We hereby launch our **Project to Restore Competitive Federalism**—a multi-year commitment to restore proper constitutional limits on both federal and state power.

Our first three cases could all set lasting precedents. In late May, we sued to overturn the Corporate Transparency Act, which violates three constitutional principles, including that the feds have no authority to threaten 32 million small entities to disclose private information just because an obsessive senator wants to control their speech (pages 2-3). On June 27, we'll ask the Supreme Court to hear and overturn an Alaska ruling that strips a family's access to its home (pages 3-4). In July, we'll challenge agency power to micromanage education policy in exchange for federal spending (pages 4-5).

And we'll never stop fighting to end government race preferences and protect free speech for all Americans until our rights are secure. Our latest two victories (pages 6-7) prove it!

You have been a vital partner in achieving unimaginable constitutional victories. And we look forward to fighting alongside you in the future to achieve even more audacious wins.

—Todd Gaziano, President

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Relaunching the competitive federalism revolution

The Project's Objective: Liberty

The Framers' greatest achievement was to refine and effectuate the Enlightenment idea that individual rights and human happiness are best promoted by divided governments with limited powers. Their genius was recognizing that the key issue is not how much total power each level of government (or each branch) possesses, but how to calibrate specific powers to create a system of checks and balances that best protects our individual liberties against government abuses.

American schoolchildren learn the importance of this balance-of-power design, but its operation is wonderfully more interesting and vital in practice, at least as it functioned for 150 years before the New Deal pressure for centralized, "expert" government began to supplant it.

CIR founder Michael Greve appropriately wrote of "competitive federalism" because the Framers' primary aim in the Constitution was to employ competition between the state and national governments, and between different states, to protect individual rights—rather than preserve state power for its own sake.

Yet over the last 90 years, competitive federalism was significantly eroded by expansive national power grabs, sheltered by ideological judges, and facilitated by state officials who would rather accept federal loot and the centralized control that comes with it than compete with other

states and the national government for the affection and interests of their citizens.

CIR previously led the charge against this serious violation of individual rights, challenging Congress's wild exaggeration of its commerce power, which was intended to prevent state tariff barriers and promote commercial activity between states. Over time, that power was wrongly cited as authority to regulate anything that remotely "affected" interstate commerce. CIR's landmark victory in *U.S. v. Morrison* in 2000 remains the most important case limiting Congress's authority to enact laws with flimsy connections to commerce, but it isn't enough.

Today, CIR is kickstarting a new federalism revolution with our **Project to Restore Competitive Federalism**. Our first case renews our focus on the commerce power, but it won't end there, as our third case shows. At the same time, we'll also check abuses of state power, which is a necessary part of the federalist design. The Fourteenth Amendment, in particular, protects many of our individual rights against state abuse.

This project will be a multi-year, multi-front fight that will not end until we have achieved a restoration of competitive federalism.

And it all starts now with three new cases.

1. Exceeding Congress's power... for the worst possible ends

Texas Top Cop Shop v. Merrick Garland

Our federalism project starts with a bang, challenging a law that unfairly threatens the privacy of tens of millions of Americans. The Corporate Transparency Act (CTA) was sold as a simple means to counter financial crimes by forcing disclosures of corporate ownership. But the Act imposes a staggering, unconstitutional mandate—nearly every corporate entity in the country must file reports disclosing confidential information with the Treasury Department's Financial Crimes Enforcement

Network (FinCEN) by year's end. Failures to file reports, as well as errors or omissions, are federal crimes.

The Act applies to any pre-existing or newly formed business entity "created by the filing of a document with a secretary of state," but exempts 23 categories of firms, including large businesses and those involved in the financial sector, i.e., those with lobbyists. This means it applies mostly to small businesses and many non-profits—those least likely to be used for international money laundering. The



Texas Top Cop Shop

government estimates this includes at least 32.6 million entities.

The reports are deeply invasive. They must provide private information about anyone who “directly or indirectly” either owns or “exercises substantial control over the entity.” FinCEN then invites various agencies to search its database to look for evidence of crime.

CIR is suing to block the CTA on behalf of a coalition of small businesses, a state political party, and the National Federation of Independent Business, an advocate for nearly 300,000 small business members nationwide.

The federal government has no authority over the internal affairs of state organizations. Since the early republic, states have had exclusive power to regulate corporate governance. The CTA upsets this history, using the mere act of filing incorporation papers as a pretense to exercise federal power over truly local activity.

The CTA also violates the First Amendment. In 1958, the Supreme Court struck down an Alabama law that required organizations—including the NAACP—to produce membership rolls because “compelled disclosure of affiliation with groups engaged in advocacy may constitute

as effective a restraint on freedom of association” as banning advocacy altogether. In a chilling parallel, one of the CTA’s liberal sponsors explained that the reporting requirements would permit government to determine “the identities behind big political spending.” History repeats itself.

And finally, the law violates the Fourth Amendment by requiring private disclosures without a reasonable justification. Some laws are bad because the ends don’t justify the means; the CTA is rotten through and through.

2. Your home is your castle, and the state can’t change that

Fiehler v. Mecklenburg

The national government’s unconstitutional expansion is the most serious threat to our individual liberties, but true federalism also means that states can’t violate our rights guaranteed under federal law either. Vern Fiehler and his son Levi understand that all too well. Due to an unconstitutional state court ruling, they have lost reasonable access to their family home.

Many decades ago, Vern bought an idyllic homesite on a cove of Tee Harbor, a coastal inlet near Juneau, Alaska. He built a home to raise his son Levi, who is now a rising stage, television, and movie actor. The land was originally a homestead and is largely inaccessible except by boat. Even today, most groceries and supplies must be delivered over water.

Neighbors on an abutting parcel covet its superior beach landing and

shelter from winter storms, so they sued in state court claiming ownership of the entire beach for their future development.

Like all of Alaska’s vast territory, both the Fiehler homestead and their neighbors’ parcel were once owned by the federal government. Through a pair of Homestead Acts, a federal surveyor mapped the land around Tee Harbor, and in 1938, surveyed the two lots now at issue. The neighbors sought to prove that the 1938 federal surveyor erred in marking the adjoining property boundaries with a brass monument.

The Fiehlers should have won the case immediately. Under what is now known as *Cragin’s Rule*, federal survey monuments marking property boundaries are unassailable. For almost two centuries, the Supreme Court has recognized “a mass of decisions” that consistently held that federal surveys of the public lands “are unassailable... except by a direct proceeding” against the federal land office, and states have no power to make similar corrections.



Vern Fiehler and his son Levi Fiehler

(cont'd on page 4)

(cont'd from page 3)

Contrary to the unanimous decisions of multiple U.S. courts of appeals and at least ten state supreme courts, the Alaska Supreme Court—with a new theory advanced by the State of Alaska—nevertheless ruled

that the Fiehlers' reliance on federal law must yield to state's position on the beach ownership.

Superlawyer Kannon Shanmugam, who has argued 37 cases in the Supreme Court, has agreed to work

with CIR staff on our petition to the Supreme Court to reverse this injustice. Together we can end the legal siege to the Fiehlers' castle.

3. Requiring “unmistakable clarity” on federal funding rules

M. K. v. Pearl River County School District

Give federal bureaucrats an inch of authority and they will write miles of regulations with sweeping national controls. Perhaps naively, James Madison argued that Congress's tax and spending power could only be used for important national purposes such as war, but Congress now uses it for countless local purposes, like controlling K-12 education policies. What's worse, when a congressional spending statute is already broad, the federal bureaucracy will stretch it another mile.

CIR is taking over the defense of a small Mississippi school district that is staring down the barrel of an unfortunate federal lawsuit based on an improper reading of Title IX of the Civil Rights Act. Parents of a sixth-grade student are seeking serious money damages, alleging that the school didn't do enough to stop other boys in his class from teasing their son, initially for being bad at videogames—and eventually by calling him “gay.”

Though this case may seem trivial, it could have huge consequences. If the parents' suit succeeds, it would extend the reach of Title IX to ratify Biden Administration regulations that control minute details about school policy on controversial topics—or if we prevail, it could stop those power grabs and require Congress and state entities to set those policies.



Pearl River Central Middle School

In 2020, the Supreme Court ruled that a different federal law (Title VII) prohibits discrimination in employment based on sexual orientation or gender identity. Since then, various people have tried to extend that result to other civil rights laws, including Title IX. But the laws are not identical.

The most important difference is that, unlike the direct mandate of the employment statute, Title IX was enacted under Congress's spending power, which provides federal funds to schools in exchange for their adherence to federal rules. The Supreme Court has held that such federal-state bargains must be “unmistakenly clear,” and new strings are not binding. Thus, Title IX can only mean what Congress and the states thought it meant when enacted

in 1972—unless Congress amends it to clearly require something new.

Federal circuits are split over whether Title IX can be expanded in controversial ways. The Supreme Court must weigh in at some point, and our case presents an appealing vehicle. Our case also has extraordinary potential to place limits on all congressional spending programs.

When we win, the bureaucratic bait-and-switch will end. Federal control won't constantly expand through rulemaking, executive orders, and judicial advocacy. Reasonable people may disagree about the proper scope of school antidiscrimination policies, but they will be debated and decided by legislators, not deceitfully imposed by bureaucrats or manipulation of the legal process. ■

Meet CIR's New Litigation Director

Caleb Kruckenberg: A Creative and Relentless Defender of Liberty

CIR is thrilled to introduce our new litigation director, Caleb Kruckenberg, a seasoned trial attorney with an impressive record of fighting government overreach to protect individual rights. With his extensive experience—and successes—in both state and federal courts, Caleb brings a unique blend of innovation, determination, and creativity to advance CIR's mission.

Career Highlights

Throughout his career, Caleb has fearlessly represented entrepreneurs, outspoken critics of entrenched power, and individuals unwilling to compromise their core values in the face of state-sponsored bullies. Caleb believes that the best way to defeat abusive government interference is to overwhelm it with the same entrepreneurial spirit his clients demonstrate.

Caleb's accomplishments as a champion of liberty are as expansive as they are abundant. He has worked as a prosecutor, a public defender,



Caleb Kruckenberg

and a lobbyist for a national advocacy organization. His most recent focus has been as an impact litigator protecting the Constitution's separation of powers at Pacific Legal Foundation and the New Civil Liberties Alliance. Unafraid to take risks and relentless in challenging on the govern-

ment, Caleb has won major victories against numerous federal agencies, including the U.S. Department of Justice, Department of Labor, Bureau of Alcohol Tobacco and Firearms, and the Securities and Exchange Commission.

One professional point of pride for Caleb is his growing list of lawsuits against eight U.S. attorneys

general, who stand in as defendants when federal bureaucrats abuse our liberties. He has also argued more than 20 times in the U.S. courts of appeals, securing victories in 8 of the 12 regional circuit courts—and counting.

Mastermind of Innovation and Creativity

In his role as litigation director, Caleb will be responsible for new case development in our three core practice areas: Equality Under Law, Free Speech for All, and Competitive Federalism.

Additionally, Caleb will fuel CIR's ambitious growth as the director of our Project to Restore Competitive Federalism (pages 2-4). This project launches a multi-year, multi-front federalism revolution aimed at re-limiting the national government to its constitutional boundaries and restoring the states' freedom to innovate and act as "laboratories of democracy."

Outside the office, Caleb spends as much time as possible climbing the world's tallest mountains. He hopes soon to summit his first peak above 26,000 feet, known as the "death zone," on one of the earth's 14 tallest mountains. His creativity is also constantly challenged thinking of new ways to convince his wife and 12-year-old daughter that he's not crazy (see "death zone" mountains).

Best of Both Worlds

Caleb's arrival at CIR coincides with two other CIR milestones: longtime general counsel Michael Rosman recently celebrated 30 years at CIR, and CIR's 35th anniversary. Michael's deep expertise and Caleb's innovative drive will be instrumental to our continued success in defending individual liberty, enforcing the proper guardrails of government power, and restoring the rule of law for all Americans. ■

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Victory! The Man Who Sued too Much

Castro v. Doe

Millions of us turn to Wikipedia for reliable information every day, so we were intrigued when CIR's client explained the hours of research, writing, and editing that volunteers contribute to each article. Imagine, then, posting a profile of a minor political figure and learning that he has just sued you for \$180 million for your public service.

A defamation lawsuit, no matter how frivolous, is a nasty weapon public figures sometimes deploy to silence their critics. CIR's client, an anonymous Wikipedia editor, found himself at the center of just such a suit when fledgling politician John Anthony Castro got upset about three items on his Wikipedia entry. Castro accused "Chetsford" (our client's penname) of involvement in a vast conspiracy with the Trump campaign to tar his reputation.

And things only got stranger from there.

Chetsford wrote for Wikipedia as a hobby, receiving many awards for his high-quality articles. He noticed that Castro, a tax consultant turned presidential candidate, was making



John Anthony Castro declared a "vexatious litigant" by Judge Pittman

right to unmask Chetsford's identity. None of the three were defamatory, and such weak allegations are insufficient to overcome Chetsford's First Amendment right to remain anonymous. (The company that publishes Wikipedia agreed.) The venerable right of anonymous speech on public issues dates to the early republic when the Framers used pseudonyms to argue for Independence and adoption of the U.S. Constitution.

Castro v. Doe is CIR's latest case to

CIR challenged both the substance of Castro's lawsuit and his failure to follow basic legal procedures. At each stage of litigation, Castro's already weak complaints lost more credibility. His amended complaints described a vast conspiracy in which Donald Trump used various entities to pay Chetsford to write the Wikipedia piece.

In March, Judge Mark T. Pittman dismissed Castro's suit, ruling that the court lacked personal jurisdiction over several of the named defendants and that Castro failed to properly serve the complaint on others, including Chetsford.

But that's not the end of the story. Castro had a lengthy record of similar frivolous suits. Judge Pittman declared Castro a "vexatious litigant" and ordered that he seek court approval before he files another lawsuit in that district.

Pittman's decision protects Chetsford's right of anonymous speech and hands Castro a well-earned judicial reprimand. Castro should have remembered the adage that "a lawyer who represents himself has a fool for a client." ■

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headlines for filing a lawsuit to keep Trump off the ballot. But there was little accessible information about Castro online. To fill the gap, Chetsford produced a thoroughly researched Wikipedia article.

Castro, representing himself, responded by filing a federal lawsuit, alleging that three items were defamatory. He sought \$180 million and the

protect the right to engage in political speech online, defeating government officials who exclude critics on social media (*Rynearson v. Bass*), public employers who retaliate for personal posts (*Davi v. Roberts*), and other predatory defamation plaintiffs who use the courts to suppress criticism (*Burke v. Doe*).

Victory! Museum's Brush with Cancel Culture Paints a Costly, Free Speech Masterpiece

Riotte v. Wadsworth Atheneum Museum of Art

Kate Riotte's questions to her colleague about the new equity policy at Connecticut's Wadsworth Atheneum Museum of Art were entirely proper. And yet, during a peak "cancel culture" moment in 2021, those reasonable questions were deemed so intolerable that she was swiftly—and unjustly—fired.

CIR jumped to Riotte's side and sued the Museum to vindicate her rights. Earlier this spring, we finished a legal masterpiece: a resounding victory for free speech and a monetary settlement award that sends a clear message that suppressing individual rights comes at a steep cost.

Riotte volunteered to serve on the Museum's new Diversity, Equity, Accessibility, and Inclusion Task Force. Riotte began working at the Museum six years earlier as an entry-level employee, and by the time of the task force's creation, she had worked her way up to curatorial administrator and reported to the Museum's chief curator.

Riotte's trouble started after the task force circulated an email asking for feedback on a draft website explaining the museum's new DEI policy. Riotte regularly attended task force meetings and worried that the policy might lead to race-based hiring, which is illegal. So she replied with questions to understand the necessity of injecting racial equity into the Museum's administrative DNA. One question, for example, asked "Why is equity essential for the growth of the Wadsworth Atheneum?"



(Image credit: Yolanda Christine)

Rather than engage in legitimate discussion, Museum officials treated Riotte's sincere, appropriate questions as a stain on the canvas of political correctness. Within a span of ten days, and despite her stated willingness to study and understand the new equity policy, Riotte was sent home to "self-reflect," her email account was disabled, and soon afterwards, she was fired.

In a year of discovery since the case filing, CIR uncovered damning email evidence that painted the truthful picture in which Museum officials fired Riotte solely because they didn't like her legitimate and reasonable questions—ones you would think a sincere task force member should raise.

The Museum then moved quickly to settlement talks. Ultimately, it agreed to a hefty financial settlement to cover Riotte's lost wages and other damages caused by the outrageous effort to punish her perfectly legitimate speech.

This case highlights the pervasive cancel culture still animating progressive employers across the nation and the importance of CIR's work; left unchecked, such threats to employees' free expression and livelihoods will only continue.

Riotte's victory reminds us that the right to free speech must be protected, even in the face of misguided attempts to promote "racial equity" at the expense of individual liberty.

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CIR filed a federal lawsuit on Riotte's behalf in March 2023, invoking a Connecticut law that extends the free speech protections of the First Amendment to employees of Wadsworth.

The other message to would-be censors, that there is a *steep* cost to suppressing free speech, is a powerful statement that, like great art, will stand the test of time. ■



You are cordially invited to CIR's 35th Anniversary Party!

*Tuesday, September 10, 2024
6:00–8:30 p.m.*

*Hay-Adams Hotel, 800 16th St., NW
Washington, DC 20006*

You've Earned It!

It's amazing what we've been able to accomplish together over the last 35 years, and CIR is taking this anniversary year to thank our heroic clients, in-house and outside attorneys, and the supporters who have done so much to restore individual rights—starting with a party at DC's historic Hay-Adams hotel, where we'll celebrate with conversation, drinks, special guests, and other surprises.

We will also commemorate the achievements of our founders, Board Members, and long-time president Terry Pell—as well as celebrate the launch of our Project to Restore Competitive Federalism.

You can join CIR's celebration in one or more of the following ways:

- 1. Come to the party!** Join us for an evening of fun and reflect on all we have achieved together.

Please RSVP today at cir-usa.org/35th-party or by calling 202-971-1573. Space is limited, so make sure to RSVP as soon as possible.

- 2. Send us a message of support!** We will read select messages at the Anniversary party, but all your words will be greatly appreciated. Send your message at cir-usa.org/35th-party

- 3. Make a special contribution!** Mark 35 years of precedent-setting victories!

- How about a \$35 recurring contribution?
- Or a one-time gift of \$350?
- Or a \$3500 contribution?

Or help us celebrate our SEVEN appearances in the Supreme Court by making sure we are ready to fight for you over the next 35 years.

- A \$70 monthly gift will help achieve 7 more Supreme Court wins!
- A one-time gift of \$700 will equip us to find courageous clients willing to fight with us.
- Or with a one-time \$7000 contribution we can launch new precedent-setting cases.

From our family to yours, thank you for making CIR's work possible.

Use this QR code to Donate
or Call 202-971-1573 today.

