INSTITUTE FOR FREE SPEECH

A Progress Report to Supporters of the Institute for Free Speech

January 2024 – December 2024

1150 Connecticut Avenue NW, Suite 801
Washington, DC 20036
(202) 301-3300
www.ifs.org

Mission

The Institute for Free Speech, 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.

Vision

Free speech. It's fundamental to American democracy. The First Amendment to the Constitution says we have the right to freely speak, associate, assemble, publish, and petition the government. Government and society can't be improved without free speech. Equally important, our free political speech rights help protect every citizen from abuse of governmental power. Free speech can mean the difference between liberty and tyranny.

Today, our free speech rights are under assault. Some politicians seek to stifle dissent, quash opposition, and expand their power. They do this by passing laws that aim to suppress and limit speech about government and candidates, threaten our privacy if we speak or join groups, and impose heavy burdens on organizing. To further their agendas, some organizations want powerful politicians to decide what speech is acceptable and what is not. Others want the government to decide how much can be spent on speech or organizing groups. Such limits make it difficult or impossible for those with differing views to make their voices heard. And if we cannot speak, others cannot hear our ideas, consider them, and act. The result is a democracy that is less vibrant, less dynamic, and less free.

The Institute for Free Speech exists to protect and defend the First Amendment's speech freedoms. We believe that differing opinions and new, challenging ideas make for a more robust democracy. We believe free speech makes it possible to improve our country and our lives. We believe free speech makes those in power more accountable to the people. We believe government should never decide who can speak and who can't—or how much speech is "too much."

We put those beliefs into practice by championing free speech for all: those less powerful, those who think differently, those with ideas that may be unpopular at the moment, and those who believe there may be a better way forward. Every day, we go to work and dedicate ourselves to protecting and defending every American's ability to exercise their First Amendment right to free political speech.

The nonpartisan **Institute for Free Speech** defends the First Amendment on many fronts. We go to court to help clients protect their rights and set new precedents. We work with government officials to craft laws that expand free speech and adhere to the Constitution. We produce research that helps us build a strong case for speech rights. We communicate with and educate the public, legislators, organizations, and the media to enable every American to understand the importance of the First Amendment's speech freedoms. Our many successes in

these areas have helped expand free political speech protections for individuals and organizations.

Free speech for all. That is our vision, our goal, our quest. If you believe in that vision as well, we ask for your support and assistance. Please join us in enhancing and defending free speech rights.

Scope of this Report

This report covers activities related to the use of funds from January 2024 through December 2024 to protect and advance free political speech and donor privacy.

The Work Ahead

We are living through a watershed moment—one that has the potential to permanently erode our First Amendment rights. The rising dangers to political speech rights, donor privacy, and academic freedom cannot be understated. This danger is also evident because the Institute for Free Speech has received more requests this year from prospective clients who need legal help than we can accept.

We intend to rise to the challenge of this moment. We will continue to work tirelessly to protect free political speech rights even as they face dire—perhaps unprecedented—threats. And, with the change in party control of the White House, we plan to work to reform or eliminate existing rules to deregulate or protect political speech.

Our proven track record of success demonstrates that an increased investment in the Institute's work has the potential to pay dividends for decades to come. Dollar for dollar, we believe we have done and are currently doing more to move the law in a pro-free political speech direction than any of our larger colleagues. When it comes to campaign finance and lobbying laws, we are regarded as the best in the industry, having litigated and won more cases than any organization in this area of the law.

Without free speech, no other reforms are possible. Lawfare using vague campaign finance and lobbying laws seriously threatens free speech and philanthropy. Donating to the Institute supports our work and allows all other organizations you help with your charitable giving to be as effective as possible.

Strategic Litigation

We approach this with humility as it is impossible to predict what case might become the next game changer. An excellent example is *Reed v. Town of Gilbert*, which started as a seemingly insignificant sign case but eventually became a critical free speech precedent.

At least half of our current cases have significant precedent-setting potential, including:

- ***Buckeye Institute v. IRS***—challenges the collection of major donor information on Form 990 Schedule B by the IRS. A federal judge rejected the government's motions to dismiss the case or rule for the IRS. He agreed with our arguments that exacting scrutiny of the challenged law is required, increasing our chances of winning, and ordered a trial to resolve facts. The IRS is very worried about the initial ruling and in March 2024 asked the Sixth Circuit to take an interlocutory appeal of the judge's ruling on scrutiny.
- ***Johnson v. Watkin*** **(California Community Colleges)—**challenges a California Community Colleges Board of Governors requirement that faculty "employ teaching, learning, and professional practices that reflect DEIA [diversity, equity, inclusion, accessibility] and anti-racist principles" in order to keep their positions. In November 2023, a magistrate judge issued a Report and Recommendation for an injunction. After nearly a year of waiting, in September, a new federal judge who was assigned to the case ruled that our client lacked standing. We've appealed. A favorable ruling would protect the academic freedom of faculty serving nearly 1.9 million students.
- ***Lowery v. Hartzell*** **(University of Texas)—**challenges UT Austin officials who threatened a professor's position for making public comments critical of the university and denouncing DEI. The suit seeks to bar UT officials from retaliatory actions against our client for his protected speech. The district court judge dismissed the case, ruling that the threats were "not adverse employment actions." We've appealed. A victory in this case could set in motion a thorough housecleaning in the entire UT system.
- ***Scaer v. City of Nashua*** **(new case)—**challenges the constitutionality of the City of Nashua, NH's policy governing the use of its Citizen Flag Pole (the city refused to allow citizens to fly the Pine Tree flag after the left's ridiculous claim that this was an insurrectionist emblem flown at Justice Alito's home). This case can potentially set a new precedent, as suggested in the concurrence by Justices Alito, Gorsuch, and Thomas in the 2022 Supreme Court decision in *Shurtleff*. They suggested a better test was needed to determine "whether the government is speaking instead of regulating private expression."
- ***Lopez v. Griswold—***challenges the nation's most restrictive limits on individual donor contributions to legislative candidates.
- ***Fellers v. Kelley*** **(new case)**—challenges a school policy that barred parents from quietly wearing pink "XX" armbands (symbolic of female chromosomes) at a high school soccer game as a silent protest of a biological male competing on an opposing girls' team. This has the potential to clear up a muddied First Circuit precedent and, at the same time, reinvigorate the Supreme Court's *Tinker* precedent and apply it to parents.

Completed Cases

In 2024, we brought the following cases to a complete and final victory on the merits.

- ***Nexstar Media, Inc. d/b/a KFOR-TV, et al. v. Ryan Walters, et al.*** **(viewpoint discrimination against journalists)**

  Oklahoma's oldest TV station fought back against state officials who repeatedly barred its credentialed journalists from public meetings and press conferences—all without explanation. We represented three reporters and their employer, the owner of Oklahoma City television station KFOR-TV, against Oklahoma Superintendent of Public Instruction Ryan Walters and his press secretary, Dan Isett.

  On September 25, the judge issued a temporary restraining order instructing the defendants to allow the station's reporters to attend State Board of Education meetings and Walter's press conferences. A settlement was reached shortly before the December 11th trial date on the merits of the case. KFOR-TV now has the same guaranteed access to state educational meetings and officials as other media outlets. The case remains open only to resolve an attorney's fee award.

- ***Markley and Sampson v. SEEC*** **(vague campaign finance law and censorship)**

  Our victory in May 2024 was also our most long-awaited, as this case began in the run-up to the 2014 Connecticut election. Then-State Senator Joe Markley and then-State Representative Rob Sampson (now a State Senator) were both running for reelection. The two candidates, whose districts overlapped, sent a series of campaign mailers highlighting their policy positions in opposition to those of the sitting governor, Dannel Malloy. The state campaign finance regulator fined them $7,000, claiming that by criticizing the Democratic governor in their campaigns, they were making an illegal campaign expenditure in the governor's race. Over a dozen other Republicans were fined for similar mailers, but only these two fought back in court for free speech.

  After six years of litigation, on May 20, 2024, the Connecticut Supreme Court unanimously ruled in favor of our clients' right to criticize the sitting governor in their campaign materials, vindicating the First Amendment rights of candidates. This is a crucial and hard-fought victory for free political speech in Connecticut.

- ***Moms for Liberty-Yolo County v. Lopez*** **(content-based discrimination)**

  In December 2023, we and the Alliance Defending Freedom filed a federal lawsuit on behalf of Moms for Liberty (M4L) and several other California civic organizations and individuals, challenging the unconstitutional actions of Yolo County Public Library officials.

  The case stemmed from an August 2023 "Forum on Fair and Safe Sport for Girls" organized by M4L at the Yolo County Public Library. Despite M4L paying to reserve the

space, library officials invited disruptive protesters to interfere with the event. The officials then ended the event almost immediately after it began, claiming that participants were "misgendering" by referring to biological males as "males" or stating that "men" are participating in women's sports.

In May 2024, we reached a favorable settlement with Yolo County Library officials. They have adopted a new Library Meeting Room Policy and Code of Behavior that better protects free speech rights at library events. The library also allowed M4L to reschedule and hold its event without interference.

At an event held soon after by many of our clients in the case, the county showed it learned its lesson. As shown in a video posted on X, the county's chief legal counsel gave a remarkable introduction to the event, stressing the importance of free speech and that opponents should not attempt a heckler's veto.

- ***NY v. VDARE Foundation, Inc.*** **(protecting the privacy of pseudonymous authors)**

  In February 2024, the Institute for Free Speech filed a motion to protect the identities of anonymous authors caught in the crossfire of an investigation by the New York Attorney General into VDARE, a controversial group supporting restricting immigration that publishes a blog where the authors contributed posts under pseudonyms. Our clients wanted to keep their anonymity.

  We filed a motion to adopt a protocol allowing VDARE to produce responsive documents in the state's investigation of the group while hiding any personal details about anonymous writers for the blog.

  Within weeks, the court granted our motion, a significant win for the First Amendment rights of the authors.

- ***Belin v. Nelson*** **(freedom of the press)**

  Our constitutional rights to a free press and free speech ensure that government officials can't unequally apply rules to deny a journalist access. Yet, that's precisely what the Clerk of the Iowa House of Representatives did to reporter Laura Belin for years.

  Belin sought press credentials from the Iowa House of Representatives before every legislative session since January 2019. In her requests, Belin has shown how her independent online news site met the House's stated requirements for a press pass. Belin also works as the statehouse reporter for KHOI Radio.

  Despite her qualifications, Iowa House Chief Clerk Meghan Nelson and a previous clerk denied Belin's credentials each time, offering shifting rationales—first saying she did not qualify as media at all, then denying her based on being "nontraditional" media, before finally denying access with no explanation. It was clear they denied these credentials because of hostility toward her hard-hitting reporting and personal views.

Days after Belin sued in January 2024, the House Chief Clerk granted her press credentials, and the case settled soon after.

- ***Pollak v. Wilson*** **(school board censorship)**

  After over two years of court battles, Harry Pollak can finally criticize Sheridan County school officials without fear of censorship. A federal judge held that while boards may restrict discussion of genuine personnel matters, using such policies to exclude all speakers who mention individual employees broadly is "unreasonable and unconstitutional." The court also held that the board chair, Susan Wilson, violated the First Amendment by invoking the personnel rule to stop our client from making critical comments.

  As the judge's order explained, "enforcing the Policy against Mr. Pollak because his comments were 'critical' but not enforcing it against others whose viewpoints were positive constitutes viewpoint discrimination, which is a violation of the First Amendment."

Favorable Initial Rulings in Ongoing Cases

We have also recently received favorable initial results in seven ongoing cases, which include three temporary restraining orders and two preliminary injunctions:

- ***Dinner Table Action, et al. v. Schneider, et al.*** **(campaign finance)**

  We filed a federal lawsuit in the U.S. District Court for the District of Maine on behalf of Dinner Table Action and For Our Future, two Maine political action committees (PACs), and Alex Titcomb, who leads both PACs.

  Question 1, passed by voters in November 2024, imposes a $5,000 limit on contributions to independent expenditure groups, often called "Super PACs."

  The suit, filed December 13, 2024, challenges the newly enacted restrictions on contributions. The lawsuit also challenges requirements that force the disclosure of all donors who contribute toward independent expenditures, regardless of how little is given.

  The law's broad disclosure requirement threatens to chill the speech and damage the associational rights of donors who wish to maintain their privacy when participating in the political process. Under current law, donors contributing less than $50 to candidates or other political committees that do not make independent expenditures can do so without public disclosure of their identity.

  The new law would force disclosure of all contributors to independent expenditures, regardless of amount, a change that multiple donors have specifically told our clients would stop them from participating in the political process.

The suit sought to block the law before it took effect two weeks later on December 25th. Fortunately, days before the Christmas deadline we were able to negotiate with the state to agree not to enforce the limit pending a trial in March 2025.

- ***Brevard Moms for Liberty v. Brevard Public Schools*** **(school board censorship)**

  In October 2024, the United States Court of Appeals for the Eleventh Circuit ruled in favor of our clients, three concerned parents from Moms for Liberty's Brevard County, Florida chapter, in their lawsuit against Brevard Public Schools. Our case challenged prohibitions on "abusive" and "personally directed" speech, as well as the school's unusually restrictive application of its ban on "obscene" speech.

  Writing for the majority, Judge Grant emphasized: "The government has relatively broad power to restrict speech in limited public forums—but that power is not unlimited. Speech restrictions must still be reasonable, viewpoint-neutral, and clear enough to notify speakers of what is permissible. The Board's policies for public participation at its meetings did not live up to those standards."

  A circuit court's precedent has the same impact on federal judges in Alabama, Florida, and Georgia (states covered by the 11th Circuit) that a Supreme Court precedent would have nationally. So, this precedent improves speech rights for nearly 40 million Americans, and it is persuasive authority in every state in the nation—a federal judge in Wyoming has already cited the precedent in ruling for our client Harry Pollak.

  The school board filed a petition for en banc review by the full 11th Circuit, which was denied.

- ***Alexander v. Sutton*** **(school board censorship)**

  New York City's Department of Education is trying to function as a Department of Conformity, especially in Community Education Council (CEC) 14 (the city's term for local school boards). There, CEC 14 leaders have punished and chilled the speech of individuals who do not conform to the personal political views of the board's leaders.

  Aiding them in this effort is the New York City Department of Education's (DOE) Regulation D-210, which governs the speech of CEC members and members of similar citywide advisory boards. The regulation permits anyone to file a complaint. It then triggers an investigation and potential removal of CEC members for speech others find offensive or disrespectful—even if it occurs outside CEC meetings.

  In March 2024, we filed a lawsuit in a New York federal court on behalf of three elected parent leaders, challenging the unconstitutional conduct of DOE officials and the regulation.

  The lawsuit contends that CEC 14 officials have unlawfully excluded individuals from public meetings and blocked critics on social media based on their point of view. CEC

14's actions and the D-210 regulation have chilled and punished the speech of parents Deborah Alexander, Noah Harlan, and Maud Maron, who serve as elected members of other New York City educational committees.

In September 2024, a federal judge issued a preliminary injunction and ordered the DOE to reinstate Maron to her elected position on CEC 2. The now former NYC Department of Education Chancellor David Banks had removed her for her public statements to the *New York Post* criticizing antisemitism that he said violated Regulation D-210.

The court also blocked enforcement of several CEC 14's rules that bar parents from criticizing the "competence or personal conduct" of individuals and other aspects of its "Community Guidelines" and "Community Commitments," which had been used to punish the speech of parent leaders, banning them from meetings and blocking them on social media.

- ***Fresh Vision OP v. Skoglund*** **(donor disclosure and vague campaign finance law)**

  In June 2024, we filed a lawsuit in Kansas federal court to protect Fresh Vision OP's right to speak without fear of prosecution. Fresh Vision is a grassroots nonprofit promoting its issue agenda in Overland Park.

  The state had previously tried to force Fresh Vision to register as a political committee and comply with a host of onerous regulations and donor reporting requirements that would have threatened its existence. Fearing further enforcement actions, Fresh Vision suspended its activities. Now, the group wants to resume its community advocacy but fears that doing so will trigger a new threat of hefty fines and jail time and force the disclosure of its donors' identities.

  In a decisive early ruling last July, a federal court granted a temporary restraining order (TRO) in favor of our client, ruling that the law's overly broad definition of "political committee" is unconstitutional. The TRO allows Fresh Vision OP to resume its community advocacy activities without fear of being regulated as a political committee. The TRO will remain in effect until the court rules on Fresh Vision OP's motion for a preliminary injunction.

- ***Gilley v. Stabin*** **(viewpoint discrimination)**

  In a decisive win for free speech, the U.S. District Court for the District of Oregon granted our request for a preliminary injunction in July 2024, protecting Prof. Bruce Gilley's right to interact with the @UOEquity X (formerly Twitter) account without blocking, muting, or censoring his speech. He had been blocked for quote tweeting, "All men are created equal."

  The court's decision prevents the Communications Manager of the University of Oregon's Division of Equity and Inclusion from blocking Gilley or hiding his posts for being

"hateful," "racist," "offensive," or "off-topic." This ruling comes after the Ninth Circuit's opinion in March 2024 that vacated the lower court's denial of a preliminary injunction.

- ***The Buckeye Institute v. Internal Revenue Service*** **(donor disclosure, discussed above)**

- ***Fellers v. Kelley*** **(K-12 school censorship, discussed above)**

Legal Work and Analysis

Many threats to free speech come not from legislation but from regulation. The Federal Election Commission (FEC), which writes rules on and enforces federal campaign finance laws, also issues advisory opinions that often dramatically affect free speech. No other group files more comments from a free-speech perspective on matters considered by the FEC.

We also file comments before other federal agencies that consider rules that affect political speech, such as the Federal Communications Commission, Internal Revenue Service, Department of Justice, Securities and Exchange Commission, and Federal Trade Commission. Our experts are often invited to testify before Congress and state legislatures. Recent examples include:

- Invited testimony before the House Select Subcommittee on the Weaponization of the Federal Government.
- Invited testimony before the Committee on House Administration, which has jurisdiction over campaign finance laws.
- Invited testimony to Oklahoma Governor Kevin Stitt's Task Force on Campaign Finance and Election Threats.
- Invited testimony to the 2023 Kansas Special Committee on Governmental Ethics Reform, Campaign Finance Law.

Ultimately, we hope to discover every proposed regulation that would significantly impact political speech at the federal and state levels and provide comments defending free speech. In many circumstances, we would suggest an alternative to the proposed regulation or modifications to improve it.

Work Outside the Courtroom

Research—Free Speech Ratings of the 50 States

Laws that regulate political speech are complex and need simplifying—if not outright elimination. No less a figure than the late Supreme Court Justice Antonin Scalia confessed in one case, "This campaign finance law is so intricate that I can't figure it out." Thus, it is hardly surprising that even the best campaign finance attorneys do not understand these laws well, and few have access to a national summary of the laws in all 50 states.

We have two ratings of the 50 states on political speech. One grades each state on

contribution limits; the other measures the effect of campaign finance and lobbying laws on free speech, emphasizing the harms of some of these laws on donor privacy. The latter is also handy for guiding litigation to protect donor privacy.

We also continue to publish our annual "Anti-SLAPP Report Card" (strategic lawsuit against public participation), which includes an interactive webpage that provides detailed information on each state. Anti-SLAPP statutes address a structural problem within American law: people can use meritless lawsuits to censor or punish speech they dislike.

The scorecards educate the public on the importance of more and better Anti-SLAPP laws nationwide. A *Forbes* columnist hailed the first scorecard as an "excellent and definitive analysis" of these laws. Indeed, **nine states have upgraded their laws since we published the first scorecard in 2022.**

These three ratings provide essential information for the public and give powerful incentives for states to make their laws and rules friendlier to First Amendment speech rights.

Media Outreach, Research, and Public Education

In 2024, the media cited our staff's commentary and research 1,883 times—a 140% increase from 2023 and the most of any time in our nearly 20-year history. Additionally, our experts appeared at dozens of conferences, on television, radio shows, and podcasts, including at The Federalist Society, Fox News, and NPR.

Four-Star Charity

Institute for Free Speech Again Awarded Charity Navigator's Top Rating

The Institute for Free Speech was again awarded a 4-star rating, the highest possible, by Charity Navigator for "demonstrating strong financial health and commitment to accountability and transparency."

Charity Navigator first rated the Institute for Free Speech in 2015; we received a 4-star rating every year since.

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.