

F. M. KIRBY FOUNDATION SOLICITATION EVALUATION FORM

DATE: November 11, 2024
Program Area: Public Affairs/Society Benefit
Grant Type: Board Grant

REQUEST DATE: October 11, 2024

APPLICANT:
Center For Individual Rights
1100 Connecticut Avenue N.W., Suite 625
Washington, DC 20036

CONTACT: Mr. Todd Gaziano, President

AMOUNT REQUESTED: \$120,000
BUDGETED AMOUNT: \$100,000

NATURE OF REQUEST: General Operating Support

GRANT HISTORY

SUPPORT: 1992-2023

OF APPROVED GRANTS: 30 **TOTAL DOLLARS:** \$2,960,000
LAST GRANT DATE: 12/08/2023 **LAST GRANT AMOUNT:** \$100,000
FYE DATE: 03/31 **AFS DATE:** 08/13/2024

| Year Approved | Approved Amount | Approval Date | Grant Purpose |
|----------------------|------------------------|----------------------|---------------------------|
| 2023 | \$100,000 | 12/08/2023 | General Operating Support |
| 2020 | \$120,000 | 08/31/2020 | General Operating Support |
| 2019 | \$120,000 | 09/16/2019 | General Operating Support |
| 2018 | \$120,000 | 09/17/2018 | General Operating Support |
| 2017 | \$100,000 | 09/15/2017 | General Operating Support |

LAST SITE VISIT DATE: March 31, 2023

ENDORSEE: N/A

FINANCIAL ANALYSIS COMMENTS: The Center for Individual Rights (CIR) submitted FY23 audited financial statements and a budget document that included FY23 actuals, FY24 year-end estimates, and a FY25 budget. (CIR operates on an April 1 – March 31 fiscal year.) FY24 year-

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end estimates outline a \$158k surplus and a 36% increase in total revenue from \$1.42M to \$1.94M. CIR saw a five-year high in contributions and grants received, a line that accounts for roughly 80% of total revenue, while investment income and donated legal services are also expected to see significant increases compared to 2023 actuals. Compared to FY24 year-end estimates, the FY25 budget projects a 22% increase in total revenue to \$2.36M, driven again by an anticipated increase in contributions and grants (32%). In the FY25 budget, as CIR prepares to significantly scale its caseload, personnel-related expenses lead the list of notable expenditures, reflecting a 36% increase compared to FY24 estimates. At the end of FY24, CIR had net assets totaling \$5.40M with 96% of those funds free from donor restrictions and \$5.40M available to meet general expenditures within 12 months. The 4% of funds (\$196k) are restricted to their *Federalism Project*. Overall, there are no red flags, as the numbers indicate a financially healthy organization in a phase of growth. FMKF last approved a grant in 2023 for \$100,000. That amount accounted for 6.5% of contributions and grants and 5.2% of total revenue.

ORGANIZATION DESCRIPTION: Celebrating its 35th anniversary, CIR is a storied public interest law firm with eight Supreme Court appearances and many other judicial victories defending the individual rights of Americans to act, think, and speak free of unlawful government interference. The problems we address are serious violations of, or threats to, fundamental individual rights that are essential to a free and flourishing society. CIR has litigated to secure a variety of such rights over its history. We act boldly when new needs arise, but we currently are the most active in three priority areas:

- Freedom from State-Sponsored Punishment for Speech
- Ensuring Equal Protection of the Law
- The Restoration of Competitive Federalism

Since it operates nationally, CIR's legal wins, especially in the U.S. Supreme Court, serve all Americans. Moreover, we also have achieved national impacts in lower court rulings, including one recently that is described in the proposal attachment.

CIR's Supreme Court appearances so far are:

Rosenberger v. Univ. of Virginia (1995)
Reno v. Bossier Parish Sch. Bd. I (1997)
Reno v. Bossier Parish Sch. Bd. II (2000)
United States v. Morrison (2000)
Gratz v. Bollinger (2003)
Grutter v. Bollinger (2003)
Schuetz v. BAMN (2014)
Friedrichs v. Cal. Teachers Assoc. (2016)

CIR secured immediate victories in six of those cases, and the other two were later won on the theory CIR first advanced (e.g., Friedrichs resulted in a tie vote after the death of Justice Scalia between argument and decision, but our case paved the way for a definitive ruling on our theory two years later).

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In Professor Steven Teles's authoritative book, *The Rise of the Conservative Legal Movement* (2008), he gave special recognition to CIR and the Institute for Justice, as the two most innovative and exemplary "second-generation" public interest legal firms. We're still innovating to increase our impact. Moreover, those impacts often expand over time. For example, CIR's first Supreme Court win in *Rosenberger*, defending the equal treatment of student organizations with religious viewpoints, led to a series of cases expanding speech and religious freedom, and ultimately was cited to uphold challenges to school choice programs. In support of our mission, CIR also files legal comments in federal agency rulemaking procedures, occasionally testifies in legislative proceedings, and appears in print and on TV and radio to educate citizens about their rights and the need for their protection

DAVID CUCCHIARA COMMENTS: The Center for Individual Rights (CIR) is a public interest law firm dedicated to defending individual liberties, with a particular focus on civil rights, free speech, and federalism. Historically known for its strong advocacy in cases involving constitutional rights, CIR has been involved in many landmark cases, such as *Hopwood v. Texas (1996)*, which challenged race-based admissions policies. CIR's programming includes strategic litigation aimed at curbing government overreach and promoting equal protection under the law. The organization also engages in educational outreach, hosting events and providing resources to raise public awareness about threats to individual freedoms and constitutional rights. FMKF has partnered with CIR for 32 of its 35 years, providing nearly \$3M in support.

CIR's 2024 application is lengthy, yet well-structured and information dense, reflecting the organization's readiness to take a major step in significantly scaling up its caseload. With just over a year in the position, having succeeded long-time President Terry Pell, Todd Graziano has embarked on an aggressive five-year strategic plan that aims to transform CIR from a small shop of litigators balancing a handful of strategic cases to a larger public interest firm more accustomed to leveraging outside help to scale its mission to restore federal constitutional law. The new strategic plan has six goals for organizational growth that reflect this new direction: 1) More than double its litigators; 2) Increase outside law firm participation by 50%; 3) Double its caseload; 4) Expand communications staff, efforts, and reach; 5) Move forward with a brand refresh; and 6) Increase its profile to improve its case referral opportunities. With this new framework, CIR will go from six staff members (5 attorneys and 1 paralegal) to more than a dozen full-time employees. In February, Mr. Graziano made his first hire — Caleb Kruckenberg, a Senior Litigation Director focused on launching new initiatives, cases, and partnerships. Mr. Kruckenberg has experience as a public interest litigator and will be responsible for guiding new case development for the *Federalism Project*, which I'll outline a later in this evaluation. This new team of litigators will collaborate with outside law firms to efficiently manage and tackle the extensive workload involved in pursuing a case before the Supreme Court or U.S. District Courts.

In recent discussions with the Institute for Justice (IJ), staff also highlighted the challenges they face in obtaining case referrals. While IJ has done an excellent job in establishing itself as a nationally recognized, flashy legal champion for constitutional rights, CIR tends to take a much more subdued, calculated approach to its case selection and communications. As a result, CIR's brand doesn't necessarily have the same prominence as IJ's, thus leading to fewer case referrals. In her 2023 EF, ECP called CIR a "no frills operation with a very modest office space and small staff." However, that selective approach and attention to detail has allowed CIR to dial in its

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litigation, taking on cases that seem to more often than not reach federal court and influence law. The new strategic plan — with a concentration on bolstering communication, raising its profile, rebranding the organization, and increasing its caseload — signals a restructuring that organizationally mirrors IJ, likely in an effort to become more competitive. But in the arena of public interest law firms protecting individual liberties and constitutional rights, is competition really necessary? Is CIR trading in its three-decade-long position as the reserved, yet increasingly more strategic litigator for the chance at name recognition? As a dedicated defender of free speech and economic opportunity for all, it seems inevitable that they would eventually seek a larger share of the spotlight for themselves. That said, CIR maintains a 80% success rate in their cases, finding themselves in front of the Supreme Court often, while IJ boasts a 75% success rate with many of their cases occurring in less prominent courts (though, on occasion, those case victories are equally as influential).

Over the last 12 months, CIR attorneys have secured victories in four cases related to free speech. In the case [*Castro v. Doe*](#), which involves the defense of an anonymous Wikipedia editor's free speech rights against a defamation lawsuit brought by a public official, the U.S. District Court dismissed Castro's lawsuit, marking a victory for free speech online. [*Davi v. Guinn*](#) featured the suspension of a hearing officer at New York's Office of Temporary and Disability Assistance after he engaged a former classmate on Facebook regarding how best to measure the success of a welfare program. On appeal, the judge ruled that the government had no evidence that his speech would cause a disruption to workplace operations, thus the government's action to suspend him was considered retaliatory and unjust. In [*Riotte v. Atheneum Museum of Art*](#), which involved a museum employee being abruptly fired for simply questioning a "racial equity" policy, CIR's threatened suit helped garner national media coverage that forced the museum into a large financial settlement with the defendant.

Additionally this year, CIR launched its *Project to Restore Competitive Federalism*, maintaining that it is the only "public interest group engaged in a comprehensive, long-term effort to present winning legal theories and cases on federalism to the Supreme Court and lower courts." Heading up this task force is Mr. Kruckenberg, who has already taken up cases related to federalism and restoring original constitutional design, including limiting Congress's authority to enact laws under its commerce power. In the case [*Texas Top Cop Shop, et al. v. Merrick Garland*](#), CIR is fighting the Corporate Transparency Act, which requires 32 million small businesses and nonprofits to provide "beneficial ownership reports," unveiling whoever owns or contributes a significant percentage of funds to the entity (shareholders, donors, etc.). CIR aims to demonstrate that the law violates First Amendment rights to free and anonymous association, as well as Fourth Amendment protections against unjustified disclosure of private information. Philanthropically, this aligns with the advocacy efforts of both Philanthropy Roundtable and the New Jersey Center for Nonprofits, particularly in advancing donor privacy protections. Other cases under the *Federalism Project* umbrella included [*Fiehler v. Mecklenburg*](#), a case that involves the Fiehler family, whose home is threatened after the Alaska state court sided with neighbors attempting to redraw property lines established by a 1938 federal survey. This decision, backed by the Alaska government, would block the Fiehlers' critical beach access. CIR argues this ruling violates federal precedent and threatens property rights nationwide. They have petitioned the Supreme Court for review, challenging Alaska's overreach under the Cragin Rule, which protects federal land surveys from state interference.

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There's no question that CIR isn't afraid to take on difficult and contentious issues. In a way, that's the point. By cutting through subjective distractions and avoiding emotionally charged or self-righteous conclusions, they advocate for a lawful process rooted in constitutional integrity. Small but mighty, I'm looking forward to watching their growth over the next few years as they scale. Hopefully, CIR can adopt an approach that balances both quantity and quality in its efforts. While FMKF's grants to organizations with significantly larger operating budgets may sometimes blend into the bottom line, a contribution equating to 5% of total revenue is significant. There's no question that FMKF has had a profound impact on CIR and the many cases their legal team has championed over the last 32 years. By supporting CIR, FMKF plays a vital role in helping strengthen free speech and safeguard individual liberties. Understanding the importance of CIR's work, while recognizing this remains one of the larger grants in the Public Affairs & Society Benefit docket, I recommend a \$100,000 grant as budgeted with plans to continue our support in a similar capacity in the future.

RECOMMENDATION: I recommend a grant of \$100,000, payable over 1 year, designated for General Operating Support.

JUSTIN J. KICZEK COMMENTS: This year's request certainly signals some significant changes on the horizon for CIR, under new leader Todd Gaziano. DAC captures these well in comments above. In sum, CIR is seeking a more contemporary, public-facing profile, which is good timing as their donor pool ages. To date, Institute for Justice has outstripped CIR in terms of public awareness and communications. Yet, DAC also notes that part of CIR's charm was "punching above their weight" in terms of staff size and caseload, choosing few but powerful cases to advance a more limited federal government agenda. Amidst all of this, CIR seems acutely aware that this is a propitious time for them to work on these cases, considering the current makeup of the Supreme Court.

The Board of CIR increased by one, with the addition of Adam White, a Senior Fellow with American Enterprise Institute. Terry Pell remains on the Board. Good to see Professor Robert George of Princeton remaining involved as well.

While I have previously expressed my appreciation for the way in which Institute for Justice represents, in many cases, humble and powerless people, I have to acknowledge that the CIR proposal this year represents *individuals* to an extent I have not seen before. Whether it be [Celeste Bennett](#) arguing for the improper disqualification of her business for federal contracting based on her race or [Vern and Levi Fiehler](#) arguing for his family's original property lines, there are several cases in here that show CIR honoring its namesake.

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DISPOSITION:

- Declination
- Hold for review on/about:
- Approval for: **\$100,000**
- Recommended Grant Payment(s):
2024:
2025:
2026:
- Hold for Board Review: **December 13, 2024**
- Payee Other Than Addressee:
- Other:

Initials: JJK

Date: October 11, 2024

Check #

Date: