

Court upholds contribution ban on federal contractors

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The U.S. Court of Appeals for the District of Columbia Circuit unanimously upheld the ban on political contributions by federal contractors in its *Wagner v. Federal Election Commission* [ruling](#), which was issued July 7, 2015. Federal law makes it illegal for any person “who enters into any contract with the United States . . . directly or indirectly to make any contribution . . . to any political party, committee, or candidate for public office or to any person for any political purpose.” 52 U.S.C. § 30119(a)(1).

The case was brought by three individuals who wanted to make contributions to federal candidates in 2012 but could not because of the federal contribution ban. The named plaintiff, Wendy Wagner, is a law professor who was hired as a consultant by a federal agency to prepare a report about science and regulation. Two additional plaintiffs were former federal employees who returned to work for their federal agency under personal services contracts after retirement. At issue before the court was the constitutionality of the ban on individuals making contributions to federal candidates and political parties.

Citing dozens of instances of corruption in federal and state government — from Watergate to Ohio’s Tom Noe scandal — the court concluded that the government has a compelling interest in regulating political contributions by federal contractors. The plaintiffs argued that the government’s interest was not furthered by the contribution ban for two reasons: (1) the advent of formalized competitive bidding procedures enacted after the contribution ban went into effect; and (2) the evidence of corruption presented by the Federal Election Commission largely focused on activities of corporations and other kinds of firms as opposed to individual subcontractors. The court squarely rejected the plaintiffs’ arguments and concluded that the law, under the narrow issues challenged in the case, is constitutional.

Notably, the court did not have before it the question of federal contractors’ contributions to “ideological PACs that, in turn, contribute to candidates.” However, the court did examine and reject the plaintiffs’ contention that the law was unconstitutional because, while both corporate and individual federal contractors were barred from making political contributions, corporate officers and corporate-controlled PACs could make contributions. The plaintiffs also challenged the law on the basis that most federal employees are permitted to make contributions while individual federal consultants, who, like Professor Wagner, may only earn a fraction of their income from federal contracts, cannot. The court rejected that argument as well.

Wagner represents the latest in a series of cases highlighting the legal tug of war underway in the courts, as they work to balance individual First Amendment rights against the government’s interest to prevent corruption in elections. It also includes an interesting summary of the political events, laws and cases that have shaped this area of law.&

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