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DC Circuit Unanimously Upholds Federal Contractor Contribution Ban

On July 7, 2015, the federal circuit court for the District of Columbia sitting *en banc* issued a unanimous opinion upholding the federal contractor contribution ban against a constitutional challenge in the long-running case of *Wagner v. FEC*. The statute at issue prohibits a federal contractor from directly or indirectly making a contribution to any federal candidate, political party or PAC between the commencement of negotiations and completion of performance of the federal contract. Plaintiffs, three individual federal contractors, argued that the statute as applied to them was unconstitutional under the First and Fifth Amendments.

The court ruled that the federal contractor ban is constitutional in that it is closely drawn to support sufficiently important government interests, namely protecting against *quid pro quo* corruption and its appearance, and interference with merit-based public administration. The court specifically declined to apply the strict scrutiny standard of review, finding that the federal contractor ban employs means closely drawn to avoid unnecessary abridgement of associational freedoms. Thus, the ban on federal contractor contributions remains in place.

The plaintiffs did not challenge the ban as applied to federal contractors making independent expenditures or contributing to independent expenditure-only political committees ("super PACs"). In separate matters, the FEC determined that the federal contractor ban applies to contributions made to super PACs. See FEC MURs 6726 and 6403. However, in 2014, the FEC dismissed an enforcement action against Chevron Corporation and its subsidiary, a federal contractor, finding that the federal contractor and the noncontracting corporate parent were separate and distinct legal entities, and as a result, the parent was not prohibited under the contractor ban from making contributions to super PACs. The *Wagner* opinion does not address the application of the federal contractor ban to affiliates.