AMERICAN CIVIL LIBERTIES UNION of the NATION'S CAPITAL

1400 20TH STREET N.W., SUITE 119
WASHINGTON, DC 20036
202-457-0800
WWW.ACLU-NCA.ORG

NEW CONSTITUTIONAL CHALLENGE TO PORTION OF FEDERAL ELECTION CAMPAIGN ACT

FOR IMMEDIATE RELEASE - October 19, 2011

Three individuals who have contracts to provide personal services to agencies of the federal government filed suit today in the United States District Court for the District of Columbia challenging the constitutionality of a provision of the Federal Election Campaign Act of 1972 (FECA) that makes it a crime for any person who has a contract with any agency of the federal government to make a contribution to any candidate for federal office or any political party or committee that is involved in federal elections. A copy of the complaint is available at http://aclu-nca.org/docket/aclu-nca-files-new-constitutional-challenge-to-portion-of-federal-election-campaign-act.

The law, section 441c of Title 2 of the U.S. Code, applies to all government contractors, ranging from large corporations with multibillion dollar contracts, to individuals who contract directly with a federal agency. Two of the plaintiffs – Jan W. Miller and Lawrence M. E. Brown – have long term contracts with the United States Agency for International Development ("USAID"), and the other – University of Texas Law Professor Wendy E. Wagner – has a contract to do a $12,000 research project for the Administrative Conference of the United States ("ACUS"). Plaintiffs ask the Court to declare section 441c unconstitutional as applied to individuals who have personal services contracts with federal agencies.

Section 441c is an absolute bar to making a contribution, even within the limits allowed to all other U.S. citizens. Both Brown and Miller previously worked for USAID and were allowed to make contributions to federal elections until they retired and returned to their agency as contractors. "Many individuals who have government contracts are unaware of this provision which does not even allow someone to give $10 to a candidate or committee that has nothing to do with government contracts,"

said co-counsel and George Washington Law School Associate Dean for Public Interest & Public Service Alan B. Morrison, who also teaches constitutional law there.

The complaint asserts that section 441c violates both the Equal Protection Clause of the Constitution and the First Amendment. The Equal Protection claim has two strands: the first is based on the fact that the plaintiffs work along side of, and carry out similar functions to, federal employees who are not subject to the ban in section 441c or any similar prohibition. The second is based on the fact that section 441c treats corporations with government contracts more favorably than it does individual contractors. Under the law, corporations can set up separate funds – better known as PACs – but individuals cannot. Moreover, officers, employees, and stockholders of corporations with government contracts may use their earnings from those contracts to make political contributions, but individual contractors cannot make contributions even from other sources of funds. "Not only does this law discriminate against contractors as compared to federal employees who are doing identical work," observed co-counsel and National Capital Area ACLU Legal Director Arthur Spitzer, "but it is the only campaign finance law that actually favors corporations, which cannot vote, over citizens who can."

The First Amendment claim recognizes the legitimacy of laws designed to prevent persons seeking government contracts from using campaign contributions to obtain them, but alleges that the fit between that goal and this law is not narrowly enough tailored to achieve that goal. The only elected federal officers are the President, Vice President, and Members of Congress, but none of those officials has any direct responsibility for awarding government contracts, especially small personal service contracts such as those held by these plaintiffs.

Under a special statute designed to provide rapid decisions in cases challenging the constitutionality of provisions of FECA, the District Judge to whom the case is assigned is required to find and certify the relevant facts immediately to the Court of Appeals for the District of Columbia Circuit, which must promptly hear the case en banc.

For further information, contact:

Arthur Spitzer
ACLU of the Nation's Capital
202 457 0800
artspitzer@gmail.com

Alan Morrison
George Washington Law School
202 994 7120
abmorrison@law.gwu.edu