**ORAL ARGUMENT SCHEDULED MAY 16, 2013**

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**No. 12-5365**

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**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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**WENDY E. WAGNER, *et al.*,**

Plaintiffs-Appellants,

v.

**FEDERAL ELECTION COMMISSION,**

Defendant-Appellee.

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On Appeal from the
United States District Court
For the District of Columbia
No. 1:11-cv-08841 (JEB)

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# REPLY BRIEF FOR PLAINTIFFS-APPELLANTS (CORRECTED)

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Corrected March 11, 2013

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**No. 12-5365**

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# REPLY BRIEF FOR PLAINTIFFS-APPELLANTS

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## SUMMARY OF ARGUMENT

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This reply is divided into three sections. First, appellants discuss the significant arguments that they made in their opening brief to which appellee either made no response or made one that does not answer the essence of appellants' challenge. Second and third, we respond to the few new points

made by the FEC in its brief on the First Amendment and Equal Protection issues, respectively.

Before turning to those arguments, appellants wish to dispel what they perceive to be the overall claim of the FEC and its amici: that plaintiffs contend that there is no danger that campaign contributions may be used in some instances to obtain federal contracts that should have been awarded to someone else, *i.e.*, that contributions may represent a form of "pay-to-play." That is not appellants' position. They recognize the potential for undue influence in some contributions, but section 441c's ban is far too broad in its reach, while at the same time allowing contributions by others that raise far greater pay-to-play concerns. It is not the goal of section 441c that is the problem; it is the way in which it operates. Congress could and should address these problems, but until it does, the First Amendment and the Equal Protection guarantee of the Fifth Amendment preclude the FEC from enforcing the ban in section 441c against plaintiffs and other individual federal contractors.

## I. WHAT THE FEC BRIEF DOES NOT ANSWER.

What is most remarkable about the FEC's 60 page brief is the number of significant arguments made by appellants that the FEC does not address, or does not address seriously. We have divided those unanswered arguments into two groups: First Amendment and Equal Protection.

### *First Amendment*

1. Assuming that the justifications asserted by the FEC to support section 441c as applied to individual federal contractors are valid, the FEC has failed to explain why an absolute ban on contributions to candidates, parties, and political committees is needed, *i.e.*, why the same contribution limits applicable to all other eligible voters do not suffice. No ban can pass even the "closely drawn" test that the FEC admits applies unless there is *some* reason why all other voters are permitted to make thousands of dollars in contributions, with full public disclosure, but individual federal contractors cannot give even $1. While the FEC has cited a potential danger from contractor contributions, it has never explained why existing contribution limits, or even lower limits, would not sufficiently address that potential danger.

2. The FEC contends that review under the "closely drawn" standard is "more lenient" (Br. 23) but cannot explain how the Supreme Court was

able to dispose summarily of the justifications offered to defend the ban on contributions by minors in *McConnell v. FEC*, 540 U.S. 93, 231-32 (2003), or how that "lenient" standard allowed the Court to conclude that the statutory level of contributions was too low in *Randall v. Sorrell*, 548 U.S. 230, 253-62 (2006). To be sure, the reason that the Court set aside the limits in *Randall* was different from the reasons that section 441c violates the First Amendment, but re-calibrating the amounts needed to run a race for elected office, as the Court did in *Randall*, could not properly be characterized as a "lenient" review. Indeed, it was a far more intrusive judicial intervention than setting aside the absolute ban in section 441c would be here.

3. The FEC relies heavily on state and local laws banning or limiting contractor contributions, but it fails to point to a single law that has been upheld that is as sweeping in its reach and as absolute in its prohibitions as section 441c. Instead, every statute, as well as the rule in *Blount v. SEC*, 61 F.3d 938 (D.C. Cir. 1995), is distinguishable in very significant ways. They include (a) exclusions for contracts under a certain amount; (b) exceptions for modest contributions of, for example, $250; and/or (c) coverage of contributions only to elected officials who have formal roles in the contracting process, and not to all candidates and unaffiliated political committees and in some cases not to political parties. While it is correct that

state laws often cover personal services contracts, we are aware of no state law contribution law, let alone a ban like section 441c, that has been applied to individuals like plaintiffs Miller and Brown who function as if they were employees.

4. The FEC fails to explain how the contractor ban can be considered "closely drawn" when it prohibits contributions to recipients that have no possible role in awarding any federal contract, including ideological and unaffiliated PACs, such as Emily's List and those established by groups such as the NRA and the Sierra Club, and minor and new parties (and their candidates) that have no federal elected officials and have no chance of electing any.

5. Nor does the FEC suggest an explanation for why a Congress that was seeking to prevent pay-to-play would fail to ban contributions from federal grant recipients, who receive more total annual federal dollars than do contractors (JA 193, p. 38), or from those who are awarded one of the 8000 appointed federal positions listed in the Plum Book (Br. 14, n.4). Given the notoriety of the "contribute-to-play" for those positions, a Congress serious about eliminating the appearance that high level federal jobs are for sale would have taken action long ago to institute a ban or do what the SEC has done for municipal securities – prohibit employing a

major contributor for two years after the last significant contribution. As the Supreme Court observed in *Republican Party of Minnesota v. White*, 536 U.S. 765, 780 (2002), the ban here is "so woefully underinclusive as to render belief in that purpose a challenge to the credulous."

6. The FEC argues that it is the role of Congress to decide issues regarding coverage of section 441c (Br. 34), because it is "better equipped" to do so than the courts (Br. 38), and the courts should not second-guess its "careful legislative judgment" on what to include or exclude (Br. 43). Beyond the fact that this is a First Amendment, not an economic regulation case, there are three major flaws in the FEC's plea for deference to Congress: (1) There is no indication that Congress ever focused on any of the objections raised by appellants at any time, starting with 1940 when the ban was enacted, until today, including when it amended section 441c in 1976. Part of the reason for the lack of attention is that there has been very little litigation over section 441c because most contractors are corporations, and they are banned by section 441b from making contributions even if they are not contractors. (2) The laws regulating political contributions in federal elections have undergone a revolutionary change since 1940, but section 441c has remained as it was when enacted. (3) Federal contracting may have been significantly influenced by contributions in 1940, but the major

changes described in our opening brief (11-12) have largely, if not completely de-politicized the contracting process. While under *Buckley v. Valeo,* 424 U.S. 1, 105 (1976), Congress may proceed "one step at a time," that does not mean that the steps that it took when it passed section 441c in 1940, or amended it to add subsections 441(b) & (c) in 1976, and made major changes in government procurement laws beginning in 1948, can be ignored forever by the courts.

7. The FEC offers **no** evidence that any elected official or other prohibited recipients of federal contributions had anything to do with the contracts of these plaintiffs or of any other individual contractor. Instead, it observes that these plaintiffs (and presumably other individual contractors) have "interacted" or had "interactions" (Br. 3, 4) with **appointed** federal officials in carrying out their contractual duties. The FEC makes a similar observation about the individuals whose positions appear in the Plum Book and who "may be able to influence" federal contracting (Br. 14, n.4) or "oversee" federal contracts" (Br. 36). But this is a First Amendment case, and those connections are simply not "closely" enough "drawn" to satisfy the Constitution.

8. The FEC argues that plaintiffs have ample other opportunities to express their political preferences, in particular the ability to hold fundraisers

for candidates for federal offices that it contends are "far more expressive" than giving money (Br.40). In addition to the basic flaw that individuals, not the Government, have the right to choose their preferred means of political expression, *Texas v. Johnson*, 491 U.S. 397 (1989), the FEC never attempts to explain how the interests in removing politics from federal contracting and avoiding the appearance of pay-to-play are supported by allowing plaintiffs to hold fundraisers that could potentially bring in $10,000 or more for candidates or parties, but are undermined by allowing the same plaintiffs to write a check for $10 to a candidate, party, or political committee of their choosing.[1]

9. The FEC insists that preventing coercion of contractors is an important purpose supporting section 441c, but it never attempts to explain why the existing federal statutes discussed in our brief (45, n.5) either do not now, or could not easily be amended to, guard against coercion, just as they do for federal employees and others.

[1] W. Va. Code § 3-8-12(d) cited by amici, p. 6, n.12, is the closest statute to section 441c, but its validity has not been challenged, as far as appellants are aware. Unlike section 441c, however, it does not permit contractors to solicit contributions "for any [political] purpose," *i.e.*, to hold fundraisers.

***Equal Protection***

10. The FEC continues ask the Court to apply rational basis review to appellants' Equal Protection claim. It correctly recognizes that appellants' First Amendment claim is subject to at least a form of heightened scrutiny – the closely drawn standard – and yet it persists in seeking to obtain a more relaxed review when appellants' claim includes the additional objection that others who are similarly situated to appellants are not subject to the ban in section 441c. It is impossible to understand why there should be a *lower* standard of review for a claim involving a fundamental right that also contains allegations of discrimination, than for the same claim involving restrictions (or, as here, a ban) that apply to everyone. Accordingly, at least intermediate scrutiny is required, and under it the "statutory classification must be substantially related to an important governmental objective." *Clark v. Jeter*, 486 U.S. 456, 461 (1988) (discussing different Equal Protection standards of scrutiny).[2]

[2] Although this reply focuses on showing why appellants should prevail even under less stringent standards of scrutiny, appellants continue to urge that their First Amendment and Equal Protection claims should be evaluated under strict scrutiny, *see* Appellants' opening brief at 25-28 (Equal Protection); 38-40 (First Amendment). Moreover, although *FEC v. Beaumont*, 539 U.S. 146, 161-63 (2003), declined to apply strict scrutiny to the contribution ban at issue there, that ban applied to a corporation, and not to individuals like appellants who have a right to vote in federal elections. Appellants also believe that the decision in *Citizens United v. FEC*, 130 S.

11. The FEC also seeks deference to Congress's differing treatment of similarly situated contributors by ascribing to Congress a "careful legislative judgment" (Br. 48), by asserting that courts "cannot override Congress's discretion" (Br. 57), and by claiming to find a "delicate balancing of interests [that] is a legislative judgment to which courts defer" (Br. 60). These contentions, like those the FEC made in its First Amendment defense, are wholly undermined by the lack of any evidence that Congress even considered the inequality between individual and corporate contractors when it added subsections 441c(b) & 441c(c) in 1976, or when it made any of the changes to the Hatch Act starting in 1940. In short, there is no "legislative judgment" or exercise of Congress's "discretion" to which a court might appropriately give deference.

12. The FEC continues to defend the discrimination in favor of corporate contractors, effectively turning the pre-*Citizens United* approach on its head, by observing that a corporate contractor and its PAC bearing its name are legally separate entities, a fact that appellants do not dispute. What the FEC does not explain is how the asserted purpose of preventing the appearance of pay-to-play, which supports the ban as applied to individuals such as plaintiffs, is not thoroughly undermined by allowing corporations to

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Ct. 876 (2010), further strengthens their argument that strict scrutiny governs the ban on individual contractors in section 441c.

set up their own PACs to make the same kind of contributions that plaintiffs cannot make. The FEC's formalistic approach to Equal Protection analysis should be rejected in favor of one in which the reason for the applicable rule of law and the context in which the classification arises are the focus of the equality analysis. Under that approach, objective observers would understand that a contribution from a contractor's PAC creates an identical appearance of pay-to-play as if the same contribution came from the contractor itself, or, as the FEC put it, that there is a comparable appearance of "a danger that politics can infect the federal contracting process" (Br. 31).[3]

13. The same kind of formalism is used by the FEC to defend allowing corporate officers, including officers and sole-shareholders of LLCs, to make contributions that plaintiffs cannot make. *Compare* N.J. Stat. § 19:44A-20.14 (forbidding state from entering contracts, but only those above $17,500 with business entities that made contributions, but only to the

[3] As the Solicitor General noted on page 23 of the amicus brief for the United States in *Hollingsworth v. Perry*, No. 12-144 (filed February 28, 2013)(citations omitted): "Under heightened scrutiny, however, a court evaluates the fit between a proffered interest and the challenged classification not in isolation or in the abstract, but in the context of the regulatory regime as it actually exists. … Petitioners cite no precedent requiring (or even permitting) a court to shut its eyes to the actual operation and effect of the law in context."

Governor or Lieutenant Governor or state political party), and N.J. Admin. Code § 19:25-24.1 (defining business entity to include owners of 10% of the business or more, not every shareholder as amici suggest is plaintiffs' position (Br. 24-25). It is true that individuals who work for corporations have a separate legal identity from their employer, but when the chief defense procurement officer of Boeing makes a contribution to the re-election campaign of the chair of the Senate Defense Appropriation Subcommittee, it is not even rational to assert that objective observers would dismiss the idea that pay-to-play might be at work there, but nonetheless assume that when these plaintiffs or the thousands of other individuals who hold federal contracts write a $100 check to any candidate, political party or political committee, no matter how disconnected the recipient may be from the contracting entity, there is an inevitable inference of pay-to-play. Similarly, from a pay-to-play perspective, as well as avoiding undue coercion on would-be contractors and assuring that contract determinations are based on merit, no sensible person would assume that those objectives are differently affected by whether plaintiff Wagner or plaintiffs' declarant Jonathan Tiemann chose to create an LLC and used that as the contracting vehicle, or simply entered the contract in his or her own name, especially

when the contracting agency is indifferent as between the two options (JA 78-79).

## II. THE FEC'S REMAINING FIRST AMENDMENT ARGUMENTS ARE WITHOUT MERIT.

In support of their motion for a preliminary injunction and again on summary judgment, appellants offered the declaration of Professor Steven Schooner, who teaches federal contracting law and has extensive experience with federal contracts while working in the Government and as an individual federal contractor thereafter. The FEC took his deposition (JA 184-221), and both parties cited it on summary judgment. In this Court (Br. 10-11), the FEC quotes and cites selectively from the Schooner materials in a way that gives the impression that the federal contracting process today is fraught with potential for political influence and that section 441c is an essential safeguard. But his declaration (JA 72-75) and the portions of his deposition discussing the protections against non-merit based decisions in the contracting process (JA 127 & citations therein), paint a very different picture that the FEC offered no evidence to rebut, even though it has access to every federal agency that hires contractors. As for its conjectures about how plaintiffs Wagner and Miller may have obtained their contracts in ways that undermine the federal contracting process (Br. 37), that is sheer speculation. Indeed, the record shows that the opposite is true (JA 50-52, ¶¶

3-4, JA 86-87; JA 64-66, ¶¶ 4-6; JA 98-99); *see also* JA 92-93 (describing the hiring process for plaintiff Brown).[4] It is not just the hiring of plaintiffs that is insulated from politics. The current process, which has been vastly improved since 1940, is now merit based. JA 126-27, ¶ 14. Of course, like any other system, it is not perfect, but it is noteworthy that the FEC has failed to identify a single example of an effort to end run the contracting process by use of political contributions, as opposed to outright bribes.

The FEC admonishes appellants for failing to distinguish *Civil Service Commission v. National Association of Letter Carriers*, 413 U.S. 548 (1973), which the District Court relied on below (Br. 29). We did not discuss it for two reasons: first, the Hatch Act at issue there specifically allowed federal employees to do what section 441c forbids plaintiffs from doing: making contributions in connection with federal elections. That right continues today and is one of the prongs of plaintiffs' Equal Protection argument. Second, there were no comparable Equal Protection claims raised in *Letter Carriers*, and the decision preceded the seminal campaign contribution case of *Buckley v. Valeo*, 424 U.S. 1 (1976), by three years, as

[4] Professor Wagner's Final Report for ACUS of 159 pages, plus appendices of another 246 pages, is now publicly available. http://acus.gov/sites/default/files/documents/Science%20in%20Regulation_Final%20Report_2_18_13_0.pdf;. For that report, plus attendance at a number of ACUS meetings, she is being paid $12,000, or slightly more than 75 cents a page just for the report.

well as the many rulings that have followed it, almost all of which increased the First Amendment protections available for political speech, including making political contributions.

The FEC describes section 441c as "one of the long-standing pillars supporting this important regulatory structure," by which it appears to mean, protecting federal contracting from the appearance of pay-to-play (Br. 19). That hyperbole is unjustified. Corporations, which comprise the vast majority of federal contractors and an even larger percentage of federal contracting dollars (JA 195, pp. 47-48), have been forbidden from making political contributions since 1907, although they are able to soften the effect of that ban by use of their PACs and their officers and shareholders. Although section 441c has been in place since 1940, there are virtually no enforcement cases utilizing it. Indeed, when the FEC attempts to show that there is a potential for corruption in the federal contracting process, the cases it cites involve crimes under other statutes (Br.14-15), where the amounts exchanged were many multiples of the contributions that plaintiffs would be allowed to make under federal law if they were freed of the ban in section 441c. And, in contrast to the secret payments in the cases cited by the FEC, any contribution that plaintiffs and other individual contractors might make would be fully disclosed. Therefore, section 441c, even with its lineage of

more than 70 years, cannot stand because "the Act imposes current burdens and must be justified by current needs." *Northwest Austin Municipal Utility Dist. No.1 v. Holder*, 557 U.S. 193, 203 (2009). [5]

The FEC also argues that the ban in section 441c is not a serious matter because it is only "temporary" (Br. 21), meaning that it ends when the person is no longer a contractor or seeking a contract. But if the temporary nature of a ban were relevant, it surely would have helped the FEC in defending the ban on contributions by minors, nearly all of whom will reach age 18, but it did not. While the FEC attempts to downplay the significance of section 441c on plaintiffs, each of them was barred from making contributions in the very significant 2012 election. Plaintiff Brown has been a federal contractor since 2006, and his contract runs for several more years, with further renewals available. JA 55, ¶¶ 4-5. Plaintiff Miller is similarly situated, as are the nearly 700 USAID individual contractors who are also subject to section 441c. JA 64-66, ¶¶ 4-5. While plaintiff Wagner's current

[5] On February 19, 2013, the Supreme Court noted probable jurisdiction in *McCutcheon v. FEC*, No. 12-536, in which the principal claim is that certain overall contribution limits that had been upheld in 1976 in *Buckley* were now unconstitutional because of subsequent changes in FECA that undermined the asserted rationales for those limits. The principle relied on by the FEC (Br. 48) that Congress is presumed to address language in a statute that it wishes to change, applies to questions of statutory interpretation; it does not relieve a court of the obligation to consider an existing statute in light of relevant changes of fact and/or law.

contract may expire as early as this June, she reasonably expects to have future federal contracts that will subject her to section 441c. JA 50-51, ¶ 2 & JA 81-82. The same is true of the retired FBI agents who conduct background investigation under federal contracts (JA 200, pp. 65-66 ) not to mention the scores of other individual federal contractors whom the FEC admits are covered by this ban (Pls. Br. 14-15). There is no legal basis under which an individual's First Amendment rights can be "temporarily" banned for years or even decades, but if there were, the lengths of the denials here surely cannot be described as temporary.[6]

In an effort to make section 441c appear more reasonable and hence less subject to constitutional challenge, the FEC observes that the plaintiffs "have chosen to reap the benefits of contracting with the federal government" (Br. 19), as if to suggest that their choice requires them, in effect, to "take the bitter with the sweet," a notion that the Supreme Court has thoroughly rejected. *Cleveland Bd. of Education v. Loudermill,* 470 U.S. 532, 541 (1985). It also may reflect the now-discredited Holmesian view of

[6] This Court in *Blount* observed that the restriction there was "for a relatively short period of time," 61 F.3d at 947, *i.e.*, two years after a contribution was made. But the rule upheld there was, unlike section 441c, far from absolute: it excluded contracts awarded on the basis of competitive bids, *id.* at 948, n. 5; it only applied to contributions "to the political campaigns of state officials from whom they obtain business," *id.* at 939; and it disregarded contributions of up to $250, *id.* at 940.

the rights of public servants that appears to have underlay Congress's understanding of the Constitution in 1940 (Pls. Br. 7-8), but that the FEC is quick to disown now (Br. 46-47). Taken as the FEC seems to want the Court to apply it, there would be no limits on the restrictions on the speech of federal contractors and no need to provide any alternative means of political expression, including allowing corporate contractors to set up PACS or their officers to make contributions from their own funds. Even the FEC does not appear to go that far, and therefore the fact that plaintiffs have "chosen to enter into contracts with the federal government" (Br. 2), is a red herring, as is the FEC's claim that the ban is "easily avoided" by not being a federal contractor (Br. 42), and should be discarded as such.

In discussing the legislative history of section 441c, the FEC recounts the tale of the campaign books and other examples (Br. 8-9) to show why section 441c helps achieve the goals of coercion-free, merit-based, politics-free contracting. There is one problem for the FEC with these examples: the quotations all use the term "he" to describe the person who made the coerced contribution, but it is unclear whether these contracts were with an individual or a company. However, because officers of corporate contractors can make contributions, even if their company cannot, all of the same potential for coercion and politically-based contracting decisions is just

as present today under section 441c as it was in 1940. In other words, a corporate officer could still be coerced into buying "campaign books" today even if his corporation cannot be.

The exclusion of officers of corporate contractors is part of our Equal Protection claim that section 441c, as applied to individual contractors, is "at once too narrow and too broad." *Romer v. Evans*, 517 U.S. 620, 633 (1996) (applying rational basis review). But it is also a First Amendment issue because it demonstrates how under-inclusive section 441c is. Thus, states that have enacted laws designed to prevent pay-to-play have included provisions that ban contributions by corporate PACS, officers, and their family members, as well as the contracting company. Pls Br. 31. Other jurisdictions have included large grants where a similar rationale applies. *E.g.*, NYC Admin Code § 3-702(18)(v) (making restrictions, not a ban, applicable to $100,000 grants); *id.* § 6-116.2i(3)(a) (determining amount).

Moreover, if Congress were serious about stamping out the appearance of corruption by severing the link between contributions and federal spending, it surely would have banned those who make, and often bundle, large contributions to the President and his party from being rewarded with high positions in the Administration. We do not argue, contrary to what the FEC suggests (Br. 43), that section 441c is fatally

flawed because it does not extend to every possible person with a connection with a federal contractor, but the First Amendment does not permit serious under-inclusions such as these when denying speech rights to plaintiffs. *Republican Party of Minnesota, supra.*

## III. THE FEC CONTINUES TO MISPERCEIVE PLAINTIFFS' EQUAL PROTECTION CLAIM.

The FEC continues to treat plaintiffs' Equal Protection claim as if it is no more than a variation on the First Amendment argument. It is not. The fact that the prior campaign finance cases have been primarily argued as First Amendment cases is because, until now, there has never been the kind of rank discrimination that is applicable to plaintiffs under section 441c. Their Equal Protection claim stands on its own because it is based on a differing and less favorable treatment of individual contractors than of others in comparable relationships with the federal government. For that reason, section 441c violates the Equal Protection command that "all persons similarly situated should be treated alike." *City of Cleburne. v. Cleburne Living Center*, 473 U.S. 432, 439 (1985) (striking down law under rational basis standard). The Court may disagree about whether their situations are similar, but that is a merits question, not a conclusion that the claims are really one.

To be sure, most campaign finance cases have been decided on First Amendment grounds, but that is because in most cases there was no significant difference in treatment between similarly situated groups. However, as *Lawrence v. Texas*, 539 U.S. 558, 579-85 (2003) shows, some cases can be based on either Equal Protection or other substantive grounds in the Constitution. *See also Boddie v. Connecticut*, 401 U.S. 371 (1971) (holding filing fee for divorce unconstitutional on both Due Process and Equal Protection grounds). At least where the differing treatment is on the face of the statute, there is every reason to address that discrimination initially and leave the broader grounds for another day.

Finally, although the District Court rejected the FEC's effort to apply rational basis scrutiny to plaintiffs' Equal Protection claim, the agency attempts to revive that lesser scrutiny when it seeks to defend the unequal treatment afforded plaintiffs. Thus, on page 56, it argues that "Congress might have *rationally* concluded that there is a lower risk of corruption or its appearance when the person receiving the government contract is different from the person making the contribution" (emphasis added). The next two sentences make similar arguments regarding other differing treatments, albeit without the "rationally" modifier, but with the "might have" in each one. Because rational basis does not apply (Pls. Br. 25-28), and the

speculation based on "might haves" will not suffice for intermediate scrutiny, the FEC's attempted justifications can not support section 441c's unequal treatment for individual contractors such as plaintiffs.

## CONCLUSION

For the foregoing reasons and those presented in appellants' opening brief, the judgment of the District Court should be reversed, and judgment entered for plaintiffs.

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## CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Civil Procedure 32(a)(7)(C), I hereby certify this 11th day of March 2013 that the foregoing Reply Brief of Plaintiffs-Appellants, has a type face of 14 points and, as calculated by my word-processing software (Microsoft Word), contains 4782 words.

/s/ Alan B. Morrison
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**No. 12-5365**

**CERTIFICATE OF SERVICE**

I hereby certify that I served and filed the Corrected Reply Brief of the Plaintiffs-Appellants this 11th day of March 2013 with the Clerk of the Court of United States Court of Appeals for the D.C. Circuit by using the Court's CM/ECF system. Service was made on the following through the CM/ECF system:

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Copies of this Reply Brief were also served by first class mail on Counsel for the Federal Election Commission and Counsel for Amici on this date.

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