

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

INGA L. PARSONS, *et al.*,

Plaintiffs,

v.

No. 14-cv-1265 (JEB)

FEDERAL ELECTION COMMISSION,

Defendant.

**MOTION FOR CERTIFICATION ORDER
PURSUANT TO 2 U.S.C. § 437h.**

Pursuant to 2 U.S.C. § 437h, plaintiffs move for an Order Certifying the Facts and the Constitutional Questions to the United States Court of Appeals for the District of Columbia Circuit. This motion is based on the complaint, the declarations of the two plaintiffs, Inga L. Parsons and Stephen C. Leckar, and a Memorandum in support of the proposed Order, which is also submitted with this motion.

Respectfully submitted,

/s/ Alan B. Morrison

Alan B. Morrison
D. C. Bar No. 073114
George Washington Law School
2000 H Street NW
Washington D.C. 20052
(202) 994 7120
abmorrison@law.gwu.edu

/s/ Arthur B. Spitzer

Arthur B. Spitzer
D.C. Bar No. 235960
American Civil Liberties Union of
the Nation's Capital
4301 Connecticut Ave NW Suite 434
Washington, D.C. 20008
(202) 457 0800
artspitzer@aclu-nca.org

Dated: July 24, 2014

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

INGA L. PARSONS, *et al.*,

Plaintiffs,

v.

No. 14-cv-1265 (JEB)

FEDERAL ELECTION COMMISSION,

Defendant.

**MEMORANDUM IN SUPPORT OF
MOTION FOR CERTIFICATION ORDER
PURSUANT TO 2 U.S.C. § 437h.**

This memorandum is submitted in support of plaintiffs' motion for a certification order pursuant to 2 U.S.C. § 437h. This is an action brought by two federal contractors who seek a declaration that the Federal Election Campaign Act's prohibition on individual contractors' political contributions in 2 U.S.C. § 441c(a)(1) is unconstitutional and an injunction against its enforcement. This is a companion case to *Wagner v. FEC*, Civil Action No. 11-1841 (JEB), in which this Court entered a certification order on June 5, 2013 (the "Wagner Certification"). *Wagner* is now pending before the United States Court of Appeals for the District of Columbia Circuit, and oral argument is scheduled, en banc, on September 30, 2014.

The legal issues in this case are identical to those in *Wagner*. The reason that this case has been filed is a concern over the possibility that the claims of all the plaintiffs in *Wagner* may become moot before a final judgment can be entered on the merits, perhaps by the Supreme Court. One of the plaintiffs in *Wagner* (Lawrence Brown) will no longer be a federal contractor after September 30, 2014. Plaintiff Wendy Wagner no longer has a federal contract, although she alleges that she may have others in the future and hence may be subject to section 441c. Plaintiff Jan Miller's contract expires on June 26, 2016.

Both of the plaintiffs in this new action are lawyers who, as part of their practice, represent indigent criminal defendants under the Criminal Justice Act, 18 U.S.C. § 30006A. As their declarations make clear, they are federal contractors who are paid for their services out of funds appropriated by Congress. They are appointed by, and their pay is controlled by, persons in the judicial branch of government, none of whom is an elected official to whom a contribution prohibited by section 441c could be made.

This Court's Certification Order of June 5, 2013, in *Wagner v. FEC* contains most of the facts that bear on the constitutional claims at issue in this case, except for those facts that relate to the particular contracts of plaintiffs Parsons and Leckar. For that reason, that Order should be incorporated by reference in the Certification Order in this case. The proposed Order submitted with this motion also adds, based on the declarations filed with this motion, the few additional facts necessary to establish that these plaintiffs have standing to claim that section 441c is unconstitutional as applied to them.

Respectfully submitted,

/s/ Alan B. Morrison
Alan B. Morrison
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

INGA L. PARSONS, *et al.*,

Plaintiffs,

v.

No. 14-cv-1265 (JEB)

FEDERAL ELECTION COMMISSION,

Defendant.

DECLARATION OF INGA L. PARSONS

Inga L. Parsons under the penalties of perjury declares as follows:

1. I am one of the plaintiffs in this action, seeking a court order declaring that 2 U.S.C. § 441c is unconstitutional as applied to individuals such as myself who have contracts with the United States Government.
2. I am a solo practitioner with a specialty in Federal Criminal Law. I am licensed in Massachusetts, New York and Wyoming. I am also of counsel to the firm Greenwood Law, LLC in Wyoming. Previously I was a Clinical Law Professor at New York University School of Law and an Assistant Federal Defender in the Southern District of New York. I was also a law clerk to the Honorable William P. Gray in the Central District of California. I have an A.B. Degree with honors in government from Harvard University. I have a Juris Doctorate from Columbia University School of Law.
3. I currently am a panel attorney under the Criminal Justice Act, 18 U.S.C. § 3006A (“CJA”), for the federal trial and habeas panels in the District of Massachusetts and the appellate panel for the First Circuit Court of Appeals. A copy of my application for panel membership (with my home information removed) is attached. My panel appointment

for the District of Massachusetts is for a three-year term; my panel appointment for the First Circuit is for a four-year term. I can apply for renewal to both. All appointments were made by the federal judges responsible for the CJA panels.

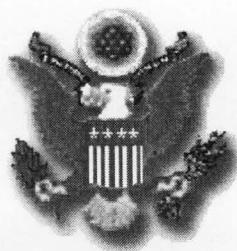
4. My current practice is about 50% CJA cases and 50% private cases. Some CJA cases are of very short duration, while others last for several years, especially those in which I handle an appeal after a trial.
5. My payment is governed by the provisions of 18 U.S.C. § 3006A, in particular subsection (d), "Payment for Representation." Subsection (d) is supplemented by updated hourly rates and specific guidelines for payments for each district and published on the courts' websites. A copy of the current rates for the District of Massachusetts can be found at <http://www.mad.uscourts.gov/attorneys/pdf/cjarates.pdf>. The current Guidelines for Submission of Reimbursement Claims can be found at <http://www.mad.uscourts.gov/attorneys/pdf/cja/111413%20MA%20CJA%20Guidelines%202013.pdf>. The CJA is administered by the Administrative Office of the United States Courts, which pays me. At the end of each calendar year, because I am an independent contractor, the Government sends me an IRS Form 1099 for my services. As a CJA panel attorney, I am a contractor with the United States Government and therefore subject to 2 U.S.C. § 441c.
6. As a federal contractor I am prohibited from making contributions in connection with Federal elections, including to candidates who are running for President in the 2016 election. I have contributed to state and local candidates including a candidate for governor in Massachusetts and a candidate for a D.C. Council position in Washington

DC. I wish to contribute to candidate campaigns for the 2016 presidential election for which I am eligible to vote in Massachusetts and would do so but for section 441c.

7. The prohibition in section 441c prevents me from providing financial assistance to particular candidates, parties, or causes in connection with federal elections just as any other citizen could do. In addition to barring me from providing financial support for candidates and parties I support, section 441c prevents me from making a public statement of financial support for candidates, causes and parties, through the making of a public contribution, either on my own or jointly through my husband in violation of the First Amendment and my right to Equal Protection.

I hereby declare under the penalties of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct. Executed on July 24, 2014.

/s/ Inga L. Parsons
Inga L. Parsons



U.S. District Court
District of Massachusetts

2012 CJA Panel Application

The following Application is to be completed by attorneys requesting appointment to the CJA list of individuals eligible to represent indigent defendants under the provisions of the Criminal Justice Act. Attention of the applicant is called to the Criminal Justice Act of 1964, as amended. 18 U.S.C. ' 3006A.

Please note the instructions on the Court=s website for downloading and completing this Application, including that the answers must be typewritten.

I am applying for: Boston Springfield Habeas Panel (also complete supplemental application)

1. Full Name: Inga L. Parsons
Office Address: 3 Bessom Street, No. 234, Marblehead, MA 09145

Office Phone: 781 581 2262
Office Email: Inga@IngaParsonsLaw.com
Office Fax: 781 842 1430
Cell Phone: 781 910 1523

Home Address:

Home Phone:

Bar Admissions

2. Year of admission to the Massachusetts bar: 2009
Board of Bar Overseers number: 675211
Year of admission to U.S. District Court (Mass.): 2009
Year of admission to any other federal or state courts: NY 1990; WY 2004; SDNY 1990; EDNY 1996; 1st Cir. 2009; 2nd Cir. 2005, USCADC 2005; U.S. Sct. 1996

Education

3. Please list all colleges and professional schools attended (other than law schools), and date of degree.

RESPONSE: Harvard University A.B. Government 1985

4. Please list all law schools attended, and date of degree.

RESPONSE: Columbia Law School J.D. 1989.

5. Please describe any significant activities, honors or awards at the above schools.

RESPONSE: Harvard: A.B. Government *cum laude*; Harvard College Scholar, Elizabeth Cary Agassiz Scholar, The Wendell Phillips Award for Public Speaking; Rhodes Scholar Finalist; Parliamentary Debate Team (President)

Columbia: Jane Marks Murphy Prize for Exceptional Interest and Proficiency in Clinical Advocacy; Criminal Litigation Workshop; Moot Court Competition; Jerome Michael Jury Trials; G.G. Michelson Fellow Given to a Law Graduate in a Public Interest Profession

6. Please describe any experience you have as a judicial law clerk or staff attorney to a court.

RESPONSE: I was a law clerk at the district court level for the Honorable William P. Gray for the Central District of California.

7. Do you speak any foreign languages? Please identify them and your level of fluency.

RESPONSE: I speak a little Spanish.

Employment History

8. Please describe chronologically your employment or law practice since becoming a member of any state bar, including a description of your current practice.

RESPONSE: 1990-1995 Federal Defender Division S.D.N.Y. Assistant Federal Defender; 1995-2003 NYU School of Law Clinical Professor for the Federal Defender Clinic; 1999 Columbia University School of Law School Adjunct Professor and Lecturer of Law (Part-Time 1999-2004); Summer 2002 Instituto Tecnologico Autonomo de Mexico Legal Writing Professor; October 2005 State Department Criminal Justice Liaison to China; 2003 to present Attorney at Law and Legal Consultant in my own practice and also of counsel to Greenwood Law LLC in Wyoming. My practice in Massachusetts and New York is strictly federal criminal practice. My practice in Wyoming involves both civil and criminal and also state as well as federal. The Greenwood Law practice is divorce, criminal, transactional and general litigation. Most of my work is research

and writing, although I will also do the criminal trials and co-counsel on any federal case.

Litigation Experience

9. Please describe any training or experience you have had with the Federal Rules of Criminal Procedure, Federal Rules of Evidence, Bail Reform Act of 1984, and the Federal Sentencing Guidelines.

RESPONSE: I was an Assistant Federal Defender in the S.D.N.Y. for five years. During that time I received substantial training including attending the National Criminal Defense College in Macon GA in 1991 in addition to the standard federal defender training. I was a clinical professor at NYU School of Law where I taught the Federal Defender Clinic and the academic course Criminal Procedure and Practice. I am the co-author of Practice Commentaries to the Federal Rules of Criminal Procedure and the author of The Fourth Amendment: Practice and Procedure.

10. Approximately what percentage of your practice in the last 5 years has been devoted to litigation? %

a. What percentage of such litigation practice in the last 5 years was:

i.	Criminal	<u>90</u>	%
	Civil	<u>10</u>	%
	Other	<u> </u>	%
		= 100	%

ii.	Practice in:		
	Federal	<u>70</u>	%
	State	<u>30</u>	%
	Other	<u> </u>	%
		= 100	%

- b. Please indicate the approximate number of trials (bench or jury) you conducted in the past 5 years:

_____ None
__x__ 1 to 5
_____ 6 to 10
_____ 11 to 20
_____ 21 or more

- i. What percent of these trials were:

80 % Jury
20 % Non-jury
= 100%

- c. Please indicate the approximate number of appeals handled over the past ten years:

18 Federal
5 State

11. Please state the approximate number of criminal cases in your career in which you were lead defense counsel in a jury trial.

RESPONSE: 20

- a. How many in Federal Court? 15 (5 in state court in Wyoming)
b. How many in Superior Court?
c. How many in District Court?

12. Please state the approximate number of criminal cases in your career in which you were lead defense counsel and performed significant work, but which did not go to trial.

RESPONSE:

- a. How many in Federal Court? 100s while a federal defender and clinical professor
b. How many in Superior Court? 0 (50 at state level in Wyoming)

13. Please state the approximate number of criminal cases in your career in which you were the lead prosecutor.

RESPONSE:

- a. How many in Federal Court? 0
b. How many of these cases included a jury trial? 0
c. How many jury trials as a prosecutor in Superior Court?
0

Specific Case Experience

14. Please identify your three most recent jury trials in Federal Court, including the docket number, judge and counsel involved, and nature of the case. Please include current phone numbers of the lawyers.

RESPONSE: My most recent jury trials have been in state court in Wyoming. We did judge trials while I was teaching at NYU Law in the Federal Defender Clinic. My most recent federal jury trials were while I was a federal defender in the Southern District of New York. I have represented a number of federal defendants since then, including while on the CJA panel, however none went to trial; most have resulted in pleas or more often I was their post-conviction attorney involved in a habeas petition or appeal. As to my federal jury trials, unfortunately my computer files do not go back that far to get specific case information. I did try many jury trials while a federal public defender most of them were narcotics cases including heroin cases, cocaine and crack cases, as well as sex crimes and I also had a bomb case.

15. If you have not had three jury trials in Federal Court, please identify your three most recent jury trials in Superior Court (or lacking those, then District Court), including the docket number, judge and counsel involved, and nature of the case. Please include current phone numbers of the lawyers.

RESPONSE: (SEE ABOVE)

16. Please identify your three most recent criminal cases in Federal Court in which you were lead counsel and performed significant work, but which did not go to trial, including the docket number, judge and counsel involved, and nature of the case. Please include current phone numbers of the lawyers.

RESPONSE: 1) U.S. v. Hakeem Hinton-Fultz, 10 CR 10282; Judge Gorton; AUSA Peter Leavitt; involved a small amount of cocaine where the client pled guilty but there were significant sentencing issues due to a reduction of the guidelines after Holloway where guidelines went from 151-188 months to 10-16 months but the government was seeking 60 months in prison; judge imposed 30 months; case is on appeal (I am appellate counsel) and the court denied the government's request for summary dismissal and they are filing their brief within the month; 2) U.S. v. Emanuel Docanto, 10 Cr. 10434; Judge O'Toole; AUSA Leah Foley; client was one of 23 other defendants and pled guilty with a 10 year mandatory minimum; guidelines were double that as he was a career offender, negotiated down to a lower guideline than what was found by the USPO; Judge O'Toole agreed that his career history level overstated the seriousness of his offenses and imposed the mandatory minimum; 3) U.S. v. Bucci, 09-2468; district court Judge Young; AUSA Theodore Merritt and AUSA Randall Kromm; Represented client on an appeal from a denial of a habeas corpus petition under 2255 with the issue of closure of jury selection on a drug case; filed the brief and argued before the First Circuit, filed a petition for rehearing and a petition for writ of certiorari which was denied last week.

17. If you have not had three such criminal cases in Federal Court, please identify your three most recent criminal cases in Superior Court in which you were lead counsel and performed significant work, but which did not go to trial, including the docket number, judge and counsel involved, and nature of the case. Please include current phone numbers of the lawyers.

RESPONSE: (SEE ABOVE)

Court-Appointment Experience

18. Have you previously applied for appointment to the CJA panel, and not been selected? When?

RESPONSE: No.

19. Are you familiar with the mandates that a CJA attorney must be willing to accept a variety of criminal cases, have computer-aided legal research, participate in PACER and electronic motion filing, represent the defendant on an appeal, schedule periodic Duty Day assignments, and attend continuing legal education programs as described in the Court=s CJA Plan?

RESPONSE: Yes.

20. Have you ever been a member of the CJA panel? Please provide the years of membership.

RESPONSE: CJA D.Mass 2009-2012; Habeas 2009-2012; 1st Cir. CJA 2011-2012

21. Approximately how many CJA appointments have you received in your entire career, and how many over the past three years?

RESPONSE: 17; 12 (not counting cases as a federal defender; the other five were by special appointment out of the SDNY or EDNY)

22. Have you been a member of a bar advocate group, murder list, or other panel to which court appointments are made in criminal cases? Please provide the years of membership, and the approximate number of cases to which you were appointed.

RESPONSE: No.

23. The Court is committed to assuring that the CJA Panel=s membership is sensitive to the diversity of the defendant population it serves. What background, experience and perspectives would you bring to the Panel that would contribute to high quality legal representation for the diverse indigent population in Massachusetts?

RESPONSE: Being on the CJA panel provides me with a way to work for clients who would not otherwise be able to afford counsel. As a former federal defender, helping the indigent has always been one of the most rewarding parts of my legal career. I work hard and I am not afraid to think outside the box in terms of representation strategy. When I was a federal defender, I was the person who was usually given the sex cases and the cases which involved clients with mental instability which helped me to be patient and empathetic towards some of the most difficult clients. I am not afraid to take on very difficult cases. I am one of the few attorneys I know who actually enjoys habeas corpus cases because I am motivated by the challenges they bring and would also like to renew my habeas corpus panel.

24. Please briefly state the reasons that you have applied for membership on the CJA Panel, and include any other information which you think would be helpful to the Board in evaluating your application.

RESPONSE: What motivates me in my profession is advocating for those who often have little voice or ability to take on the system and fight for their rights and against injustice. Being on the CJA panel has given me the opportunity to fight for those who

often cannot fight for themselves and cannot afford a lawyer to fight for them. The panel itself also has been a terrific introduction to the practice of law in Massachusetts. I have learned so much about the federal practice in the District of Massachusetts which is surprisingly quite different from the Southern and Eastern District of New York or the District of Wyoming. I have been especially impressed with the quality of help from the Federal Defenders Office and co-counsel on cases. The camaraderie has been extraordinary and it has made me a much better lawyer.

Interest in Participating in a Mentor Program

25. If selected for membership on the CJA Panel, would you be interested in acting as a mentor for a less experienced attorney who is interested in future membership on the CJA Panel and who could benefit from observing your handling of this type of case?

RESPONSE: Yes.

26. If not selected at this time for membership on the CJA Panel, would you be interested in assisting a CJA Panel member in handling a specific case assignment, without compensation, in order to gain more experience?

RESPONSE: Yes.

Professional

27. Please describe your participation as a faculty member at continuing legal education programs, bar association conferences, or law school forums over the past five years.

RESPONSE: Harvard Trial Advocacy Workshop; Mass. CLE; NITA San Francisco Program.

28. Please describe your attendance at continuing legal education programs, bar association conferences, or law school forums over the past five years.

RESPONSE: Various NITA sponsored activities including a conference in Savannah Georgia and Federal Defender training programs.

29. Please identify your membership in bar associations or law-related organizations in the past ten years, and any leadership positions that you have held.

RESPONSE: ABA, NACDL; NYCLA (co-chair women's law committee); ECBA, Wyo. Bar Assoc.

Conduct

30. Have you ever been disbarred, suspended, reprimanded, censured, or otherwise disciplined, publicly or privately, as an attorney, or as a member of any other profession, or as a holder of any public office? Are any civil, criminal or disciplinary charges or complaints now pending against you? If so, please provide the details.

RESPONSE: Not sure if this qualifies but I had a pro hac vice case in New Jersey that had ended but was assessed a fee for the next year and was not aware of it until I received a late notice of fees and was placed on a public list for non-payment; I went ahead and paid the additional fee even though the case had been closed.

References

31. Please list the names and phone numbers of no more than four persons (who are not judges) whom the CJA Board can contact to discuss your professional competence and qualifications for the CJA Panel.

RESPONSE: Debra Delvecchio (978) 740 5999; Michael Liston (857) 259-6040; Marvin Schechter (212) 307-1405; John J. Byrnes (212) 417-8735.

32. Please list the names of any Federal Judges or Magistrate Judges before whom you have practiced.

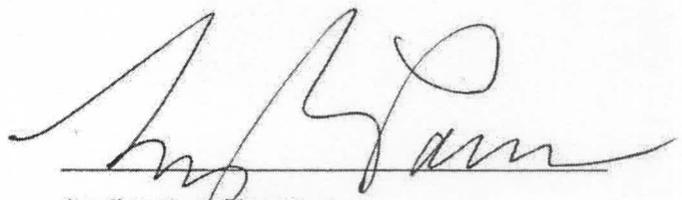
RESPONSE: D. Mass: Hon. Judge O'Toole; Hon. Judge Gorton; Hon. Magistrate Judge Boal; Hon. Magistrate Sorokin. EDNY: Hon. Judge Amon (Chief Judge); Hon. Judge Block; Hon. Judge Garaufis; Hon. Judge Gershon; Hon. Judge Glasser; Hon. Judge Korman; Hon. Judge Weinstein; Mag. Judge Azrack; Mag. Judge Bloom; Mag. Judge Gold; Mag. Judge Levy; Mag. Judge Pollak. SDNY: Hon. Judge Preska (Chief); Hon. Judge Batts; Hon. Judge Cedarbaum; Hon. Judge Buchwald; Hon. Judge Crotty; Hon. Judge Griesa; Hon. Judge Haight; Hon. Judge Kara; Hon. Judge Keenan; Hon. Judge Koeltl; Hon. Judge McKenna; Judge Patterson; Hon. Judge Sand; Hon. Judge Stanton; Hon. Judge Sweet; Hon. Judge Scheindlin; Hon. Judge Wood; Mag. Judge Francis. D.WYO: Hon. Judge Brimmer; Hon. Judge Downes; Hon. Judge Johnson; Mag. Judge Beamon.

Writing Sample

33. Please attach (as a tabbed Appendix 1) one example of a brief, memorandum of law, or similar example of legal writing not to exceed fifteen pages - which was prepared solely by you within the past five years. If you do not have a sample of this length, please include an excerpt from a longer document. Do not exceed the fifteen-page limit. The Board's preference is for a document which relates to a federal criminal case.

I hereby certify that the above information is true and correct.

Date:


Applicant's Signature

An original of the completed application and writing sample shall be submitted **no later than 5:00 p.m. on October 10, 2012** to:

Christine L. Karjel, Financial Manager
United States District Court - Suite 2300
John Joseph Moakley United States Courthouse
1 Courthouse Way
Boston, MA 02210

In addition, the application and writing sample must be emailed as separate pdf files to cja@mad.uscourts.gov submitted **no later than 5:00 p.m. on October 10, 2012**. Please label the pdf files [LAST NAME]-[FIRST NAME]-Application and [LAST NAME]-[FIRST NAME]-Writing Sample. **APPLICATIONS WILL NOT BE CONSIDERED UNLESS THEY ARE RECEIVED BOTH IN HARD COPY AND BY EMAIL.**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

INGA L. PARSONS, *et al.*,

Plaintiffs,

v.

No. 14-cv-1265 (JEB)

FEDERAL ELECTION COMMISSION,

Defendant.

DECLARATION OF STEPHEN C. LECKAR

Stephen C. Leckar declares under penalty of perjury as follows:

1. I am one of the plaintiffs in this action, seeking a court order declaring that 2 U.S.C. § 441c is unconstitutional as applied to individuals such as myself who have contracts with agencies of the federal government.
2. I am of counsel to the law firm of Kalbian Hagerty LLP. I am licensed to practice in the District of Columbia, Illinois, Georgia, four federal district courts, the Court of Federal Claims, two federal circuit courts of appeals, and the United States Supreme Court. I received my J.D. from Duke University Law School, and I have been practicing law since 1974. After serving as a trial attorney for the Commodity Futures Trading Commission, I entered private practice in 1978. I have served as lead counsel and argued more than 25 complex criminal appeals before the United States Court of Appeals for the District of Columbia Circuit, as well as several civil appeals. I also argued *United States v. Antoine Jones*, 132 S. Ct. 945 (2012), in which the Supreme Court ruled that the installation of a GPS surveillance device on a motor vehicle was a search under the Fourth Amendment.

3. I am a panel attorney under the Criminal Justice Act, 18 U.S.C. § 3006A (“CJA”), for the federal appellate panel in the District of Columbia. I have served on this panel for twenty years, during which time I have been engaged in one or two cases per year. I am currently representing clients in two complex CJA-funded cases, one before the D.C. Circuit and the other a petition before the Supreme Court seeking a writ of certiorari to the D.C. Circuit. I am also on the CJA panel for the Fourth Circuit and currently have one case there on which oral argument has been calendared. I have also served as co-counsel in a CJA felony prosecution in the U.S. District Court for the District of Columbia.
4. As a CJA panel attorney, I am a contractor with the United States Government. As of March 1, 2014, I will be paid at an hourly rate of \$126 per hour for my work on non-capital cases, subject to a cap of \$7,000 per case for appointments made on or after that date, unless the matter is designated as “complex,” in which case the cap can be exceeded on motion for excess compensation, provided the Court of Appeals is satisfied that the time and costs incurred are reasonable. The hourly rates and caps were previously lower. This information, along with other information regarding payment, is available on the D.C. Circuit’s website:
[http://www.cadc.uscourts.gov/internet/home.nsf/Content/VL%20-%20RPP%20-%20CJA%20Letter%20to%20Court%20Appointed%20Counsel/\\$FILE/CJALTR2.pdf](http://www.cadc.uscourts.gov/internet/home.nsf/Content/VL%20-%20RPP%20-%20CJA%20Letter%20to%20Court%20Appointed%20Counsel/$FILE/CJALTR2.pdf).
I am paid by the Administrative Office of the United States Courts and an IRS Form 1099 is issued for my services.

5. I have made financial contributions to federal candidates and political committees in recent years. I wish to continue to make contributions to federal candidates and committees, including candidates in the 2016 presidential and congressional elections.
6. Until recently, I was not aware that a federal statute, 2 U.S.C. § 441c, purports to prohibit all federal contractors from making any contributions to federal candidates or committees. If that statute were constitutional, it would prevent me from assisting and supporting candidates in the same way, and subject to the same limits, as other American citizens, including government employees such as my counterparts at the D.C. Federal Defender's Office, my litigation adversaries at the U.S. Attorney's Office and the Department of Justice, and lawyers who work for major government contractors such as Lockheed Martin Corporation or Booz Allen. I believe this discrimination would violate my rights under the equal protection component of the Fifth Amendment, and that this ban also violates my rights under the First Amendment by preventing me from making a public statement of support for those candidates I favor through the making of campaign contributions. I wish to continue to make financial contributions to federal candidates and committees and would do so if 2 U.S.C. § 441c were enjoined by this Court.
7. I reside at 6516 Lakeview Drive, Falls Church, Virginia 22041. I am a registered voter in Fairfax County, VA, and have regularly voted in state and federal elections both at my current address and at my prior address in Arlington, Virginia.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on July 24, 2014.

/s/ Stephen C. Leckar
Stephen C. Leckar

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

INGA L. PARSONS, *et al.*,

Plaintiffs,

v.

No. 14-cv-1265 (JEB)

FEDERAL ELECTION COMMISSION,

Defendant.

[PLAINTIFFS' PROPOSED]
CERTIFICATION ORDER

This is an action brought by two federal contractors who seek a declaration that the Federal Election Campaign Act's prohibition on individual contractors' political contributions in 2 U.S.C. § 441c(a)(1) is unconstitutional as applied to them, and an injunction prohibiting its enforcement against them. This is a companion case to *Wagner v. FEC*, Civil Action No. 11-1841 (JEB), in which this Court entered a certification order on June 5, 2013 (ECF No. 51) (the "Wagner Certification"). *Wagner* is now pending before the United States Court of Appeals for the District of Columbia Circuit, and oral argument is scheduled, en banc, for September 30, 2014.

The constitutional claims in this case and in *Wagner* are the same, as are counsel for all parties. Counsel have been candid as to the reason for filing this action: plaintiff Wendy Wagner no longer has a federal contract, although she alleges that she may have others in the future and hence may be subject to section 441c. Plaintiff Lawrence Brown will no longer be a federal contractor after September 30, 2014. And plaintiff Jan Miller's contract expires on June 26, 2016. There is no assurance that this case will be concluded by then, especially if it goes to the Supreme Court, as many other campaign finance cases have done. The rationale for this case is

to preclude any possibility that the constitutional challenge to section 441c will become moot before a final judgment on the merits can be entered.

Because this case is, in effect, a supplement to *Wagner*, the Court hereby incorporates by reference the entire Wagner Certification, including the Constitutional Questions for Appeal and the Findings of Fact other than the Findings particular to the plaintiffs in *Wagner*.

The Court makes the following additional findings of fact, based on the complaint, the FEC's answer, and the declarations filed by the plaintiffs:

1. Plaintiffs Inga L. Parsons and Stephen C. Leckar are lawyers who are members of Criminal Justice Act panels, appointed pursuant to 18 U.S.C. § 3006A, to represent indigent criminal defendants who are entitled to representation under that Act. As members of those panels, they have contracts with the United States Government under which they are paid from funds appropriated by Congress.

2. Plaintiffs Parsons and Leckar have made contributions to candidates for political office, and both wish and intend to make contributions in connection with federal elections in 2016 and subsequent years if protected against prosecution under section 441c.

3. Plaintiffs Parsons and Leckar are registered to vote and will be eligible to vote in the Presidential election in 2016.

4. Plaintiffs Parsons and Leckar became CJA panel members, and therefore federal contractors, as the result of appointments by the judges of the courts in which they appear. The appointment process is supervised by Article III federal judges and other officials in the federal judicial branch, none of whom is an elected officer and none of whom could receive contributions prohibited by section 441c. The pay of CJA panel attorneys, including plaintiffs, is based on the rates established by the courts in which they perform their services.

5. The Court, therefore, ORDERS that the above constitutional questions and findings of fact are hereby CERTIFIED to the *en banc* Court of Appeals for the District of Columbia Circuit.

IT IS SO ORDERED.

JAMES E. BOASBERG
United States District Judge

Dated: August ___ 2014