Mark Langer, Clerk  
U.S. Court of Appeals for the D.C. Circuit  
E. Barrett Prettyman Courthouse  
333 Constitution Ave., NW  
Washington, DC 20001

(oral argument held en banc on September 30, 2014)

Dear Mr. Langer:

This letter responds to the letter from the Federal Election Commission relating to the recent decision in *Yamada v. Snipes*, Nos. 12-15913 & 12-17845 (9th Cir. May 20, 2015).

The principal plaintiff in *Yamada* was a for-profit corporation that made substantial contributions to candidates for the Hawaii legislature and also made independent expenditures in connection with elections for that body. It was barred by law from making contributions to such candidates whenever it held government contracts. That ban did not apply to its principals or to family members of those principals, who were permitted to give within the limits of the law. Slip. Op 49 n. 18. Its sole objection was to the ban as applied to “lawmakers or candidates who will neither award nor oversee its contracts.” *Id.*, 46.

Plaintiffs do not disagree that the Ninth Circuit made the statements ascribed to it by the FEC, but there are other relevant aspects of the applicable laws that distinguish *Yamada* from this case. First, on the question of whether the ban imposed a significant burden on the corporate plaintiff, the fact that its shareholders, officers, and their families could make contributions, and that the corporation could, and did, make independent expenditures in legislative races,
surely lessened that impact. Pls. Opening Brief 28-32, 52-55. Second, because the plaintiff sought only to make contributions to state legislators, and not to political parties or political committees, or to races for other elected offices, the Court had no need to consider the applicability of the ban to those who have no connection to procurement at all, which is at issue in this case. *Id.* 51-52. Third, plaintiff in *Yamada* did not argue, as plaintiff do here, that the non-inclusion of others, such as grantees and major bundlers, whose desire to obtain federal benefits was at least comparable to that of individual contractors, was inconsistent with the First Amendment. *Id.* 55-59.

Finally, *Yamada* was solely a First Amendment case, and plaintiffs in *Wagner* devoted a major portion of their brief (23-38) to their Equal Protection claim.

Respectfully submitted,

/s/ Alan B. Morrison  
Alan B. Morrison  

/s/ Arthur B. Spitzer  
Arthur B. Spitzer  

Counsel for the Plaintiffs
General Information

**Court**
United States Court of Appeals for the District of Columbia Circuit; United States Court of Appeals for the District of Columbia Circuit

**Federal Nature of Suit**
Civil Rights - Other[2440]

**Docket Number**
13-05162