

Judge Strikes Down Ban on Direct Corporate Contributions to Federal Candidates, But Don't Open the Company Checkbook Just Yet

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In a surprising development, the ability of corporations to contribute directly to federal candidates is one step closer to reality under a federal court's ruling in *United States v. Danielczyk*. On June 7, 2011, Judge James C. Cacheris of the Eastern District of Virginia ruled that the federal law banning direct political contributions by corporations was unconstitutional under the Supreme Court's decision in *Citizens United v. FEC*, 130 U.S. 876 (2010). The decision, which has sparked a great deal of commentary in the legal press, was one of the latest in the expanding fallout from the *Citizens United* decision.

In his opinion, Judge Cacheris threw out charges against businessman William Danielczyk, the former chairman of Galen Capital Group. According to the allegations in the complaint, Mr. Danielczyk directed and conspired to direct corporate funds to Hillary Clinton's 2006 Senate and 2008 presidential campaigns.

Judge Cacheris' decision is not the final word, however, as the government appealed to the U.S. Court of Appeals for the Fourth Circuit. The issue is whether *FEC v. Beaumont*, 593 U.S. 146 (2003), a case the Supreme Court decided seven years prior to *Citizens United*, is still good law with respect to direct political contributions by for-profit corporations. *Beaumont* dealt most directly with nonprofit corporations and held that they were prohibited from contributing directly.

Most courts that have considered the question, including the Second, Eighth and, most recently, the Ninth Circuits, have invoked *Beaumont* to hold that direct corporate contributions remain illegal. In fact, in

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Thalheimer v. City of San Diego, the Ninth Circuit decided only two days after the *Danielczyk* decision that *Beaumont's* holding permitting a ban on direct corporate contributions survived the *Citizens United* decision.

Judge Cacheris, however, disagreed. After requesting additional briefing from the parties on the significance of *Beaumont*, he concluded that the decision spoke only to the question of whether nonprofits could make direct political contributions. The court therefore went on to consider whether the logic of *Citizens United* rendered the ban on direct contributions unconstitutional. In *Citizens United*, the Supreme Court concluded that because there is no constitutional difference between a human being and a corporation under the First Amendment, and the Court had previously ruled that limited contributions by individuals were permissible, independent expenditures by corporations also must be allowed. Therefore, Judge Cacheris reasoned, corporations also must be able to contribute *directly* in the same ways and amounts as individuals.

Judge Cacheris left undisturbed a number of other charges alleging that Mr. Danielczyk made contributions in the name of another, obstructed justice and made false statements to investigators.

It is now up to the Fourth Circuit to decide whether Judge Cacheris' reasoning about corporate contributions is sound. The district court decision has no binding legal effect outside the Eastern District of Virginia.