

United States District Court
Southern District of Iowa
Central Division

Iowa Right to Life Committee, Inc.,

Plaintiff,

v.

Tom Miller, in his official capacity as Iowa Attorney General; **W. Charles Smithson**, in his official capacity as Iowa Ethics and Campaign Disclosure Board Executive Director; **James Albert, John Walsh, Patricia Harper, Gerald Sullivan, Saima Zafar, and Carole Tillotson**, in their official capacities as Iowa Ethics and Campaign Disclosure Board Members; and **John Sarcone**, in his official capacity as Polk County Attorney,

Defendants.

Civ. No. 4:10-cv-00416

**Expedited Consideration and
Oral Argument Requested**

Verified Complaint for Declaratory and Injunctive Relief

Iowa Right to Life Committee, Inc. (“IRTL”) complains against Defendants (“State”) as follows:

Introduction

1. This a First Amendment¹ free speech and association case in which IRTL challenges Iowa’s attempt to subvert *Citizens United v. FEC*, 130 S. Ct. 876 (2010) (“*Citizens*”), which permitted corporations to make “independent expenditures”² under a federal scheme that (a)

¹ “Congress shall make no law . . . abridging the freedom of speech” U.S. Const. amend. I.

² *Important note on uncommon Iowa terminology:* Under federal law, “independent expenditures” are any expenditures (not including “contributions”) for communications containing “express advocacy,” 2 U.S.C. § 431(17), i.e., explicit words expressly advocating the election or

allows corporations to decide what independent expenditures to make under their regular decision-making process, (b) does not require political-committee-style registration within a short time, ongoing reporting, or termination, (c) only has 48- and 24-hour reporting deadlines for expenditures that are large or near elections, and (d) does not impose political committee (“PAC”) status as a result of independent expenditures that do not constitute the major purpose of a corporation. *See infra*.

2. Now that *Citizens* permits corporations to make independent expenditures—and also contributions under its analysis and logic—IRTL wants to do so in connection with the coming November election, but finds itself chilled by unconstitutional, PAC-style, Iowa requirements.

3. IRTL challenges the following provisions of Iowa law that impose unconstitutional burdens on corporations making independent expenditures and contributions.

a. **Iowa Code sections 68A.102(18)** (“political committee” definition triggering PAC status at the same \$750 threshold that triggers “independent expenditure committee” status and independent-expenditure reporting) and **68A.402(9)** (requiring “permanent organizations” doing political activity, including independent expenditures, to form PACs) unconstitutionally impose

defeat of a clearly identified candidate such as “vote for” or “elect” (the so-called “magic words”). *Buckley*, 424 U.S. at 44 & n.52. While Iowa recognizes that express advocacy speech requires magic words, *see* Iowa Code § 68A.102(14)(b), it includes “contributions” in the “express advocacy” definition, § 68A.102(14)(a) and defines “independent expenditures” to mean expenditures aggregating (for an unlimited time period) *over \$750* for communications expressly advocating for or against candidates (or ballot measures), § 68A.404(1).

In the text above and elsewhere where precedents are being discussed, the federal (common) meanings apply to “independent expenditure” and “express advocacy,” e.g., “independent expenditure” will mean one *of any amount* and “express advocacy” will *not include contributions*. Iowa’s meaning for these terms will only apply where context requires, e.g., in discussing an Iowa statute based on Iowa definitions.

Note also that, while “committee” and “independent expenditure committee” are defined terms of art that should be mutually exclusive, Iowa sometimes uses “committee” where “independent expenditure committee” is the antecedent in the immediate context. *See infra* n. 13.

PAC burdens without regard to *Buckley*'s requirement that political-committee status only be imposed on organizations that meet the major-purpose test, *see Buckley v. Valeo*, 424 U.S. 1, 79 (1976), making Iowa's PAC-status scheme unconstitutional as applied to groups lacking *Buckley*'s "major purpose." *See* Count 1.

b. **Iowa Code sections 68A.402B(3), 404(3), 404(4), Iowa Administrative Code rule 351-4.9(15), Form for "Organizations Making Independent Expenditures," and Form DR-3** impose PAC-style burdens including a form of registration within a short time, ongoing reporting, supplemental reports from groups for simply *raising* over \$1,000, and dissolution requirements on independent-expenditure committees which scheme imposes an unconstitutional burden on free speech and association and fails to follow the less-restrictive federal scheme and the Supreme Court's mandate that PAC-style burdens may only be imposed on organizations having *Buckley*'s "major purpose," 424 U.S. at 79. *See* Count 2.

c. **Iowa Code section 68A.503** unconstitutionally bans corporations from making political contributions to candidates or committees despite the facts that (1) *Citizens*, 130 S. Ct. 876, held that the corporate form, alone, poses no cognizable risk of corruption, and (2) Iowa allows non-corporate associations, including labor unions, to make such contributions, which together violate First Amendments rights to free speech and association and the Fourteenth Amendment equal-protection guarantee. *See* Count 3.

d. **Iowa Code section 68A.404(2)(a)-(b)** unconstitutionally requires a corporation (but not other associations) to obtain express approval from its board of directors, in the same calendar year, before making any independent expenditure to support or oppose a political candidate. By targeting corporations without constitutional justification, this provision violates the First Amendment's guarantee of freedom of speech and association and the Fourteenth

Amendment's guarantee of equal protection of the laws. *See* Count 4.

Jurisdiction and Venue

4. This Court has jurisdiction over this case arising under 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the Constitution of the United States. 28 U.S.C. §§ 1331, 1343(a).

5. Venue is proper because events giving rise to the claim occurred, and Defendants reside, in this District. 28 U.S.C. § 1391(b).

Parties

6. Plaintiff Iowa Right to Life Committee, Inc. ("IRTL") is a non-stock, nonprofit Iowa corporation, with headquarters in Des Moines, Polk County, Iowa.

7. As Iowa Attorney General, Defendant Tom Miller has the power to prosecute criminal violations of Iowa law, including violations of statutory provisions challenged here. *See* Iowa Code §§ 13.2(1)(b), 68B.32C(4).

8. As Executive Director of the Iowa Ethics and Campaign Disclosure Board ("Board"), W. Charles Smithson is the chief administrative officer and has authority to investigate violations of, and to enforce the provisions of, Iowa Code chapter 68A, chapter 68B, and the rules adopted by the Board. Iowa Code chapter 68B.32(5).

9. As officers and members of the Board, Defendants James Albert (chair), John Walsh, Patricia Harper, Gerald Sullivan, Saima Zafar, and Carole Tillotson have the power to investigate violations of, and to enforce the provisions of, Iowa Code chapter 68A, chapter 68B, and the rules adopted by the Board. Iowa Code §§ 68B.32B, .32C, .32D.

10. As Polk County Attorney, John Sarcone has power to prosecute criminal violations of Iowa law, including violations of statutory provisions challenged here. *See* Iowa Code

§§ 68B.32C(4), 331.756(1).

11. Defendants are sued in their official capacities.

Facts

12. The Iowa scheme for reporting independent expenditures is set out in Iowa Code Chapter 68A (titled “Campaign Disclosure–Income Tax Checkoff Act”), Iowa Administrative Code Chapter 4 (titled “Campaign Disclosure Procedures”), and Board-approved Forms for “Organizations Making Independent Expenditures” (**Ex. 1**; used for both the statement of organization and reporting) and DR-3 (**Ex. 2**; “Statement of Dissolution”), which forms are statutorily authorized and include authoritative instructions.

13. In the wake of the holding in *Citizens* that corporations are free to make independent expenditures, IRTL wants to make independent expenditures to support candidates who it believes will fight to protect issues that are important to its organization, such as protecting life. Although IRTL is constitutionally permitted to do these things, it is chilled from doing so due to the burdens imposed by the restrictions challenged here—particularly the uncertainty of when PAC status might be imposed—and the potential civil and criminal penalties for violating the challenged provisions.

14. IRTL is the Iowa affiliate of the National Right to Life Committee, Inc. and is the largest pro-life organization in Iowa. IRTL’s primary purpose is “to present factual information upon which individuals may make an informed decision about the various topics of fetal development, abortion, and alternatives to abortion, euthanasia, infanticide and prevention of cruelty to children.” Iowa Right to Life, IRTL Mission Statement, <http://iowartl.org/about/irtl-mission>.

15. IRTL is exempt from federal income taxes as a social welfare organization under 26

U.S.C. § 501(c)(4). Organizations under (c)(4) must be “primarily engaged in promoting in some way the common good and general welfare of the people of the community.” 26 C.F.R.

§1.501(c)(4)-1. This purpose “does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office.” *Id.* IRTL, like other (c)(4) organizations, may engage in some unambiguously-campaign-related speech, but its major purpose is not and will never be the nomination or election of candidates.

16. On or before October 14, 2010, IRTL wants to make a single independent expenditure totaling more than \$750, to support the election of Brenna Findley, candidate for Attorney General. IRTL plans to make and distribute a mailer expressing support of Ms. Findley’s pro-life beliefs. The mailer will be sent to IRTL’s general mailing list.

17. IRTL wishes to decide when and how to make its independent expenditures in the manner it deems appropriate. Specifically, IRTL objects to Iowa’s statute that prevents a corporation from making independent expenditures unless its board of directors specifically approves them within the same calendar year that the independent expenditures are made.

18. IRTL does not want to be classified under Iowa law as a political committee because it is not constitutionally subject to such classification, does not want to be described and perceived as a political committee, and does not want to be subject to the onerous registration, reporting, and dissolution requirements. IRTL is chilled from making the above-mentioned independent expenditures because doing so will cause IRTL to be defined by statute as a political committee under Iowa law. *See* Iowa Code § 68A.102(18) (political-committee definition).

19. On or before October 14, 2010, IRTL wants to make a \$100 contribution to Brenna Findley, candidate for Attorney General. IRTL is chilled from doing so because Iowa law forbids corporations (but not unincorporated associations) from making contributions to candidates.

20. IRTL wants to make its independent expenditures and contributions on or before October 14, 2010, because it believes that September through early October is the most effective time to communicate its message. This is the period, IRTL believes, when voters are beginning to pay attention to the issues. IRTL wants to communicate its message during this period. In addition to the planned activity recited herein, IRTL intends to do materially similar future activity.

21. IRTL has no adequate remedy at law.

Count 1
Iowa Code §§ 68A.102(18) and 402(9)
Imposed PAC Status Without Required “Major Purpose”

22. IRTL re-alleges and incorporates by reference all of the allegations contained in all of the preceding paragraphs.

23. IRTL challenges Iowa Code sections **68A.102(18)** and **402(9)**, which unconstitutionally impose PAC status on entities whose major purpose is something other than nominating or electing candidates.³

³ In Advisory Opinion 2010-05, the Board was asked whether it recognized the major-purpose requirement for PAC status as follows:

Must an entity that makes expenditures or receives contributions for the purpose of influencing an election, and becoming subject to registration and reporting as a committee, have the “major purpose” to nominate or elect candidate[s] for public office in Iowa?

The Board made clear that Iowa does not recognize the major-purpose test as follows:

An entity that exceeds \$750 in Iowa by “expressly advocating” the “nomination, election, or defeat of a clearly identified candidate for public office or the passage or defeat of a clearly identified ballot issue” is subject to Iowa’s disclosure requirements. We would need more specific information concerning what activity the entity was to engage in prior to being able to give specific advice on the level of registration and disclosure. For example, a permanent organization that was not otherwise a prohibited contributor making a one-time contribution to an Iowa committee files Form DR-OTC as opposed to registering and reporting as a PAC. Similarly, an “independent expenditure committee” will not be subject to the same registration and reporting requirements as a PAC.

24. Section 68A.102(18)⁴ is the political committee definition. It fails to include the required major-purpose test from *Buckley*, which held that PAC status may only be imposed on “organizations that are under the control of a candidate or the *major purpose* of which is the nomination or election of a candidate,” 424 U.S. at 79 (emphasis added). This puts IRTL at risk for being considered a PAC based on a vague we-know-it-when-we-see-it approach to determining PAC status by the Board.

25. Section 68A.402(9),⁵ mandates that a “permanent organization” engaging in activity that

⁴ **Iowa Code section 68A.102(18)** provides:

“Political committee” means any of the following:

a. A committee, but not a candidate’s committee, that accepts contributions in excess of seven hundred fifty dollars in the aggregate, makes expenditures in excess of seven hundred fifty dollars in the aggregate, or incurs indebtedness in excess of seven hundred fifty dollars in the aggregate in any one calendar year to expressly advocate the nomination, election, or defeat of a candidate for public office, or to expressly advocate the passage or defeat of a ballot issue.

b. An association, lodge, society, cooperative, union, fraternity, sorority, educational institution, civic organization, labor organization, religious organization, or professional organization that accepts contributions in excess of seven hundred fifty dollars in the aggregate, makes expenditures in excess of seven hundred fifty dollars in the aggregate, or incurs indebtedness in excess of seven hundred fifty dollars in the aggregate in any one calendar year to expressly advocate the nomination, election, or defeat of a candidate for public office, or to expressly advocate the passage or defeat of a ballot issue.

c. A person, other than an individual, that accepts contributions in excess of seven hundred fifty dollars in the aggregate, makes expenditures in excess of seven hundred fifty dollars in the aggregate, or incurs indebtedness in excess of seven hundred fifty dollars in the aggregate in any one calendar year to expressly advocate that an individual should or should not seek election to a public office prior to the individual becoming a candidate as defined in section 68A.102, subsection 4.

⁵ **Iowa Code section 68A.402(9)** provides (emphasis added):

Permanent organizations. *A permanent organization temporarily engaging in [political] activity* described in section 68A.102, subsection 18, *shall organize a political committee* and shall keep the funds relating to that political activity segregated from its operating funds. The political committee shall file reports on the appropriate due dates as required by this section. The reports filed under this subsection shall identify the source of the

would trigger PAC status “shall organize a political committee,” which also fails to recognize *Buckley*’s requirement that PAC status can only be imposed on organizations having the “major purpose,” and also fails to recognize the holding in *Citizens* that organizations that do not have the “major purpose” cannot be forced to employ a PAC to engage in political speech, but must be allowed to engage in their own speech.

26. PAC status may be imposed only on groups with *Buckley*’s “major purpose,” and “the permissible scope of political committee regulation is best understood as an empirical judgment as to whether an organization primarily engages in regulable, election-related speech.” *N.C. Right to Life v. Leake*, 525 F.3d 274, 287 (4th Cir. 2008).

27. *Citizens* stands squarely against provisions that mandate being or having a PAC in order to do independent expenditures (except perhaps if an organization has *Buckley*’s “major purpose”). *Citizens*, 130 S. Ct. at 897-99.

28. Because Iowa cannot show that these provisions are narrowly tailored to a compelling interest, they are unconstitutional. The challenged provisions are unconstitutional, as applied to IRTL and other groups lacking *Buckley*’s “major purpose” because they violate First Amendment free speech and association guarantees.

Count 2

Iowa Code §§ 68A.402B(3), 404(3), 404(4);

Iowa Admin. Code r. 351-4.9(15);

Form for “Organizations Making Independent Expenditures”; Form DR-3

original funds used for a contribution made to a candidate or a committee organized under this chapter. *When the permanent organization ceases to be involved in the political activity, the permanent organization shall dissolve the political committee.* As used in this subsection, “permanent organization” means an organization that is continuing, stable, and enduring, and was originally organized for purposes other than engaging in election activities.

**PAC-Style Registration and Dissolution,
Ongoing Reporting, and Receipt-Triggered Reporting**

29. IRTL re-alleges and incorporates by reference all of the allegations contained in all of the preceding paragraphs.

30. IRTL challenges Iowa Code sections **68A.402B(3)**⁶ and **404(3)**,⁷ **404(4)**,⁸ Iowa Adminis-

⁶ **Iowa Code section 68A.402B(3)** provides:

If a person who files an independent expenditure statement and a disclosure report, pursuant to section 68A.404, determines that the person will no longer make an independent expenditure, the person shall notify the board within thirty days following such determination by filing a termination report on forms prescribed by the board.

⁷ **Iowa Code section 68A.404(3)** provides (emphasis added):

A person, other than a committee registered under this chapter, that makes one or more independent expenditures shall file an *independent expenditure statement*. . . .

a. Subject to paragraph “b”, the person filing the independent expenditure statement shall file reports under sections 68A.402 and 68A.402A. An *initial report* shall be filed at the same time as the *independent expenditure statement*. *Subsequent reports shall be filed according to the same schedule as the office or election to which the independent expenditure was directed*.

(1) A *supplemental report* shall be filed on the same dates as in section 68A.402, subsection 2, paragraph “b”, if the person making the independent expenditure either *raises or expends more than one thousand dollars*.

(2) A report filed as a result of this paragraph “a” shall not require the identification of individual members who pay dues to a labor union, organization, or association, or individual stockholders of a business corporation. A report filed as a result of this paragraph “a” shall not require the disclosure of any donor or other source of funding to the person making the independent expenditure except when the donation or source of funding, or a portion of the donation or source of funding, was provided for the purpose of furthering the independent expenditure.

b. This section does not apply to a candidate, candidate’s committee, state statutory political committee, county statutory political committee, or a political committee. This section does not apply to a federal committee or an out-of-state committee that makes an independent expenditure.

⁸ **Iowa Code section 68A.404(4)** provides (emphasis added):

a. An independent expenditure statement shall be filed *within forty-eight hours* of the making of an independent expenditure in excess of seven hundred fifty dollars in the aggregate, or within forty-eight hours of disseminating the communication to its intended audience, whichever is earlier. For purposes of this section, an independent expenditure is

trative Code rule **351-4.9(15)**,⁹ **Form for “Organizations Making Independent Expenditures,”** and **Form DR-3**, which impose PAC-style registration within a short time-period and dissolution requirements on independent-expenditure committees,¹⁰ in addition to requiring supplemental reports from groups simply *raising* over \$1,000 in contributions earmarked for making independent expenditures, *see* Iowa Admin. Code r. 351-4.13(6), which is like the requirement for PACs to regularly report receipts.

31. In analyzing the constitutionality of Iowa’s scheme, it is important to compare it to the less-restrictive, independent-expenditure federal scheme because adopting the least-restrictive means to meet any governmental interest is necessary under the strict scrutiny required when PAC-style disclosure is required (e.g., requiring registration, termination, or ongoing reporting as opposed to merely requiring disclaimers and reporting after regulable activity occurs). *See FEC*

made when the independent expenditure communication is purchased or ordered regardless of whether or not the person making the independent expenditure has been billed for the cost of the independent expenditure. . . .

⁹ **Iowa Administrative Code rule 351-4.9(15)** provides (emphasis added):

Independent expenditure reporting. An independent expenditure committee that is required to file campaign disclosure reports pursuant to 2009 Iowa Code Supplement section 68A.404(3) as amended by 2010 Iowa Acts, Senate File 2354, section 3, shall file an initial report at the same time as the committee files its original independent expenditure statement. The committee shall then *continue to file reports according to the same schedule* as the office or election to which the independent expenditure was directed *until the committee files a notice of dissolution* pursuant to Iowa Code section 68A.402B(3) as amended by 2010 Iowa Acts, Senate File 2354, section 2. Form Ind-Exp-O shall serve as a campaign disclosure report for an independent expenditure committee. . . .

¹⁰ Groups doing independent expenditures are called “independent expenditure committees,” Iowa Admin. Code r. 351-4.1(1)(d), though they are not otherwise treated as “committees.” *See* Iowa Code § 68A.102(8) (“‘Committee’ includes a political committee and a candidate’s committee.”); *accord* Iowa Admin. Code r. 351-4.1(1)(a) (definition does not include independent-expenditure committees). But Iowa Admin. Code rule 35-4.13(6) first references an “independent expenditure committee” and then, within the same context of this antecedent uses “committee” to refer to the antecedent.

v. Mass. Citizens for Life, 479 U.S. 238, 262 (1986) (“*MCFL*”) (noting federal independent expenditure reporting scheme and concluding that “state interest in disclosure therefore can be met in a manner *less restrictive*” than PAC-style disclosure (emphasis added)); *id.* at 263 (“This hardly constitutes the *compelling* state interest necessary to justify any infringement on First Amendment freedom.” (emphasis in original)); *Austin v. Mich. State Chamber of Commerce*, 494 U.S. 652, 658 (1990) (“[R]equirements similar to those in the federal [PAC] statute involved in *MCFL* . . . must be justified by a *compelling* state interest.” (emphasis added)), *overruled on other grounds by Citizens*, 130 S. Ct. at 913.

32. Under the less-restrictive federal scheme, a corporation or other group wanting to do independent expenditures simply makes them and files what may be called an “event-driven report” the next time quarterly independent expenditure reports are due.¹¹ There is no form of registration and termination, no ongoing periodic reports (absent additional independent expenditures), and no special corporate board approval. There is no short-span reporting period except for *large* amounts in a particular election and for certain expenditures *near* an election. The federal scheme is described below by the Federal Election Commission (“FEC”) from a brochure explaining independent-expenditure reporting for non-PACs under the Federal Election Campaign Act (“FECA”):

Any other person [than a political committee] . . . must file a report . . . at the end of the [quarterly] reporting period in which independent expenditures with respect to a given

¹¹ Filing dates are April 15 (for first quarter, January-March), July 15 (second quarter), October 15 (third quarter), and January 31 (fourth quarter). 11 C.F.R. §§ 109.10(b); 104.5(a)(1)(i) and (ii). So no report is filed sooner than fifteen days after an independent expenditure is made, and it may be filed nearly four months after the independent expenditure is made. The exception is for independent expenditures over \$10,000 in a particular election (48-hour reporting) and independent expenditures over \$1,000 within twenty days of an election (24-hour reporting). *See infra*.

election aggregate more than \$250 in a calendar year and in any succeeding [quarterly] period during the same year in which additional independent expenditures of any amount are made. 11 C.F.R. § 109.10(b).

...

48-Hour Reports

Once . . . aggregate independent expenditures during a calendar year reach or exceed \$10,000 with respect to a given election at any time up and including the 20th day before an election, a 48-hour independent expenditure report must be filed . . . These reports must include all independent expenditures with respect to that election that have not previously been disclosed.

Additional 48-hour reports are required for subsequent independent expenditures related to the same election that aggregate \$10,000 or more through 20 days before an election.

...

24-Hour Reports

Once . . . aggregate independent expenditures reach or exceed \$1,000 with respect to a given election, and are made fewer than 20 days, but more than 24 hours, before an election, the independent expenditure must be reported . . . within 24 hours of the time the communication is publicly distributed . . . These reports must include all independent expenditures with respect to that election that have not been previously disclosed. 11 C.F.R. 104.4(c), (e)(2)(ii) and (f); 109.10(d).

FEC, *Coordinated Communications and Independent Expenditures* (Jan. 2009) (available at http://www.fec.gov/pages/brochures/ie_brochure.pdf). In short, reporting is triggered by *actually making* independent expenditures. There is no registration or dissolution requirement for making such expenditures, no reporting triggered by receipts of contributions, and no 48-hour reporting except for very large independent expenditures over \$10,000.

33. In contrast to the federal requirement of simple, event-driven reporting for independent expenditures, the sorts of disclosure imposed on *PACs* (i.e., “PAC-style” disclosure) includes registration within a short time period, 2 U.S.C. § 433 (must register within ten days of becoming a PAC); recordkeeping, 2 U.S.C. § 432; ongoing periodic reporting requirements, 2 U.S.C. § 434, including reporting of contributions received, 2 U.S.C. § 434(b)(2); required committee status and ongoing recordkeeping and reporting obligations until dissolution, 2 U.S.C. § 433(d) (filing of termination statement); and dissolution requirements requiring that the organization

essentially cease to exist to escape ongoing PAC status and reporting obligations, *id.*

34. *Citizens* pronounced these PAC burdens “onerous,” subjected them to strict scrutiny, and held that they cannot be imposed on corporations making independent expenditures. 130 S. Ct. at 897-98. By contrast, *Citizens* expressly approved the federal scheme of simple, *event-driven* reports of independent expenditures made, which it evaluated under exacting scrutiny. *Id.* at 913-16.

35. Iowa chose not to adopt the simple, *Citizens*-approved, non-PAC-style, less-restrictive independent-expenditure reporting scheme. Instead, Iowa imposed PAC-style disclosure requirements, including registration by filing an independent-expenditure *statement* within 48 hours, registered “independent expenditure committee” status, ongoing periodic reporting requirements,¹² and formal dissolution that effectively requires the entity to cease to exist. Even this dissolution report is not sufficient to terminate the PAC-style responsibilities as the state Board must approve the dissolution before the independent expenditure committee is relieved of its ongoing status and obligations (after which records must still be kept for three years).^{13,14}

¹² In connection with giving compliance advice, an attorney from the office of IRTL’s lead counsel contacted Iowa Ethics and Campaign Disclosure Board’s Legal Counsel, Charles Smithson, regarding the issue of ongoing reporting. While Mr. Smithson orally represented that Iowa does not require ongoing reporting, Iowa’s statutes, regulations, and forms indicate otherwise. IRTL seeks preliminary and permanent injunctive relief and a declaratory judgment on the matter. Representations regarding enforcement “are insufficient to overcome the chilling effect of the statute’s plain language.” *Citizens for Responsible Government State PAC v. Davidson*, 236 F.3d 1174, 1192 (10th Cir. 2000). *See also United States v. Stevens*, 130 S. Ct. 1577, 1591 (2010) (“We would not uphold an unconstitutional statute merely because the Government promised to use it responsibly.”); *Northwest Forest Resource Council v. Pilchuck Audubon Soc’y*, 97 F.3d 1161, 1168 (9th Cir. 1996) (only thing standing in the way of prosecution is “a statutory interpretation espoused by the agency’s counsel that the agency ha[s] not implemented.”).

¹³ Iowa says that “[a]n independent expenditure committee . . . is not required to file a statement of organization,” Iowa Admin. Code r. 351-4.1(1)(d), which PACs must file. But an independent-expenditure committee *is* required to file “an independent expenditure statement”

36. Since the challenged provisions impose PAC-style burdens on political speech, they must be justified under strict scrutiny. But there is no interest that cannot be satisfied under the less-restrictive federal scheme. For example, under the federal scheme even a *PAC* need not register with the FEC for *ten* days, 2 U.S.C. § 433(a), so even if groups doing independent expenditures could be required to register and remain registered “committees” until dissolution,

within 48 hours that must be filed simultaneously with its “initial report.” Iowa Code § 68A.404(3)(a). This is a PAC-style form of registration. Though Iowa permits filing a single form to satisfy both the statement and report requirements, *see Ex. 1* (“By filing this statement/report as an organization you have filed campaign reports to 68A.402A and will be forming an Independent Expenditure Committee which requires a DR-3 to be filed when final report is filed.”), the fact that this committee has “registered” and is an ongoing “committee” is evident from the fact that it must file Form DR-3 (“Statement of Dissolution”) to terminate this committee status. Form DR-3 indicates that committees dissolving must, *inter alia*, dispose of all their assets, *i.e.*, cease to exist.

Moreover Form DR-3 indicates that ongoing reporting is required of independent-expenditure committees because it warns (in large, bold, caps): “A committee continues to have filing responsibilities even though it has a zero cash balance and no activity in the reporting period. The obligation to file does not cease until the final report and the statement of dissolution are filed and accepted (certified) by the Board” (capitalization altered). This requirement of ongoing registered committee status and reporting obligations is also made clear in the regulation: “An independent expenditure committee . . . shall file an initial report at the same time as the committee files its original independent expenditure statement. The committee shall then *continue to file reports according to the same schedule as the office or election to which the independent expenditure was directed until the committee files a notice of dissolution . . .*” Iowa Admin. Code r. 351-4.9(15). And note that here, as elsewhere (*see supra* n. 2), “committee” is used to mean (or include) “independent expenditure committee” where an antecedent makes that meaning possible.

¹⁴ Under Iowa’s scheme, the “independent expenditure committee” definition overlaps the “political committee” definition, *see infra*, because both have a \$750 aggregation trigger (which for PACs aggregates within a year) that can be pulled by making independent expenditures, so that being a independent-expenditure committee could also trigger PAC status (with penalties for non-compliance with PAC requirements if a group is deemed a PAC without knowing that it was). The Supreme Court’s solution is to require that PAC-status may be imposed on no group unless it is “under the control of a candidate or . . . [its] *major purpose* . . . is the nomination or election of a candidate.” *Buckley*, 424 U.S. at 79 (emphasis added). Since Iowa does not recognize *Buckley*’s major-purpose test there is no way for an organization engaging in independent expenditures, or making contributions (if permitted, *see infra*), to know when it is at risk for being deemed a PAC under Iowa law. *See* Count 1.

there is no justification for 48-hour registration. And there is no compelling interest in requiring the filing of independent-expenditure reports before the next periodic filing period except for significant independent expenditures after a periodic filing date has passed near an election (or for large sums in a particular election, which interest Iowa does not assert). And there is no compelling interest in requiring *independent expenditure* reporting when no independent expenditure has occurred but rather a contribution earmarked for independent expenditures has been received. And even if there were such interests, the challenged regulations fail the narrow tailoring requirement.

37. The challenged provisions are an unconstitutional burden on First Amendment free speech and association, as evidenced by the less-restrictive federal scheme, and these PAC-style burdens violate the mandate of *Buckley*, 424 U.S. at 79, that PAC-style burdens may only be imposed on “organizations that are under the control of a candidate or the *major purpose* of which is the nomination or election of a candidate,” *id.* at 79 (emphasis added)).

38. Because Iowa cannot show that these provisions are narrowly tailored to a compelling interest, they are unconstitutional, facially and as applied to IRTL and its intended activities, because they violate First Amendment free speech and association guarantees. And if Iowa insists that it does not intend to require ongoing reporting for IRTL and similar groups making independent expenditures, then the challenged statutes, regulations, and enforcement policy (as reflected in its instructions for its forms) are unconstitutionally vague and overbroad in violation of the First and Fourteenth Amendments.¹⁵

¹⁵ If the provisions challenged here are held unconstitutional as challenged, Iowa will retain an independent-expenditure disclosure scheme similar to the federal scheme of one-time reports. Iowa will still be able to require disclosure at the \$750 level at the next filing date for periodic reporting. Subsequent reporting will be done only if additional independent expenditures are

Count 3
Iowa Code § 68A.503
Ban on Corporate Contributions

39. IRTL re-alleges and incorporates by reference all of the allegations contained in all of the preceding paragraphs.

40. IRTL challenges Iowa Code section **68A.503**,¹⁶ which unconstitutionally bans corporate

made. Supplemental reports near elections but beyond the periodic filing dates will be permitted for independent expenditures aggregating over \$1000, but they will not be triggered merely because contributions earmarked to make independent expenditures are received (though earmarked contributions will be included on reports otherwise required). There will be no form of registration or dissolution required unless a group meets *Buckley*'s "major purpose" test for imposed PAC status.

¹⁶ **Iowa Code section 68A.503** provides (emphasis added):

1. Except as provided in subsections 3, 4, 5, and 6, an insurance company, savings and loan association, bank, credit union, or *corporation shall not make a monetary or in-kind contribution to a candidate or committee* except for a ballot issue committee.
2. Except as provided in subsection 3, *a candidate or committee*, except for a ballot issue committee, *shall not receive a monetary or in-kind contribution from* an insurance company, savings and loan association, bank, credit union, or *corporation*.
3. A[] . . . corporation may use . . . any . . . thing of value of the entity for the purposes of soliciting its stockholders, administrative officers, professional employees, and members for contributions to a political committee sponsored by that entity and for financing the administration of a political committee sponsored by that entity. The entity's employees to whom the foregoing authority does not extend may voluntarily contribute to such a political committee but shall not be solicited for contributions. A candidate or committee may solicit, request, and receive money, property, labor, and any other thing of value from a political committee sponsored by a[] . . . corporation as permitted by this subsection.
4. The prohibitions in subsections 1 and 2 shall not apply to . . . any of the following activities:
 - a. Using its funds to encourage registration of voters and participation in the political process or to publicize public issues.
 - b. Using its funds to expressly advocate the passage or defeat of ballot issues.
 - c. Using its funds to place campaign signs as permitted under section 68A. 406.
 - d. Using its funds for independent expenditures as provided in section 68A.404.
5. a. The prohibitions in subsections 1 and 2 shall not apply to media organizations when discussing candidates, nominations, public officers, or public questions. . . .
6. The prohibitions in subsections 1 and 2 shall not apply to a nonprofit organization

contributions to candidates and committees.

41. The corporate contribution ban infringes IRTL's (and all corporations') First Amendment rights without a constitutionally cognizable state interest. *Citizens* held that associations that choose to incorporate do not pose a constitutionally cognizable corruption risk warranting special restriction of their activities. 130 S. Ct. at 899–911. Corporate contributions are not inherently more dangerous than contributions from other entities. Furthermore, such a ban is not properly tailored to the State's interest in preventing corruption (e.g., quid pro quo, or political favors for campaign cash).

42. The corporate contributions also violates the Equal Protection Clause of the Fourteenth Amendment by singling out particular content (namely, political speech expressed via political contributions) and particular speakers (namely, corporations, insurance companies, banks, credit unions, and savings and loan associations) without justification. Iowa Code § 68A.503(1). Other similarly situated organizations are free to make contributions to candidates, committees, and political parties. *See* Iowa Code § 68A.503 (labor unions, LLCs, and general partnerships excluded from entities banned from making contributions). The State may not treat similarly situated entities in disparate ways. Because the corporate contribution ban affects First Amendment rights, it must satisfy strict scrutiny or else it violates the Fourteenth Amendment—that is, it must be narrowly tailored to a compelling state interest. *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 101 (1972). *See also Dallman v. Ritter*, 225 P.3d 610, 634 (Colo. 2010) (recognizing that corporations and labor unions are similarly situated for campaign-finance purposes). But

communicating with its own members. . . .

7. For purposes of this section “corporation” means a for-profit or nonprofit corporation organized pursuant to the laws of this state, the United States, or any other state, territory, or foreign country.

the State has no interest, compelling or otherwise, to support the disparate treatment. The corporate contribution ban therefore violates the Fourteenth Amendment.

43. Because Iowa cannot show that the corporate contribution ban is narrowly tailored to a compelling interest, it is unconstitutional, facially and as applied to IRTL and its intended activities, because it violates First Amendment free speech and association guarantees and the Fourteenth Amendment equal-protection guarantee.

Count 4
Iowa Code §§ 68A.404(2)(a)-(b) and 404(5)(g), and Form
for “Organizations Making Independent Expenditures”
Prior Board Approval of Independent Expenditures

44. IRTL re-alleges and incorporates by reference all of the allegations contained in all of the preceding paragraphs.

45. IRTL challenges Iowa Code sections **68A.404(2)(a)-(b)** and **404(5)(g)**, and **Form for “Organizations Making Independent Expenditures,”**¹⁷ which mandate that the corporate board of directors (or other governing body) expressly authorize independent expenditures in advance and within the same calendar year, regardless of how a corporation would otherwise make such a decision (“prior-board-approval requirement”).

¹⁷ **Iowa Code section 68A.404(2)(a)-(b)** provides:

a. An entity, other than an individual or individuals, shall not make an independent expenditure or disburse funds from its treasury to pay for, in whole or in part, an independent expenditure made by another person without the authorization of a majority of the entity’s board of directors, executive council, or similar organizational leadership body of the use of treasury funds for an independent expenditure involving a candidate or ballot issue committee. Such authorization must occur in the same calendar year in which the independent expenditure is incurred.

b. Such authorization shall expressly provide whether the board of directors . . . authorizes one or more independent expenditures that expressly advocate the nomination or election of a candidate or passage of a ballot issue or authorizes one or more independent expenditures that expressly advocate the defeat of a candidate or ballot issue.

46. Section 404(2)(a) targets corporations. At first glance, the statute appears to apply to all organizations alike—that is, all “entit[ies], other than an individual or individuals.” Iowa Code § 68A.404(2)(a). But a careful analysis shows that the law applies only to corporations. The term “entity” is not defined in the statute. If given its ordinary meaning, “entity” would include more than corporations alone, *see Black’s Law Dictionary* (8th ed. 2004) (defining “entity” as an “organization (such as a business or a governmental unit) that has a legal identity apart from its members”), but the surrounding statutory text and the Board’s prescribed form implementing the statutory scheme show that the term “entity” in section 404(2)(a) cannot be given its ordinary meaning, and in fact is used to impose special restrictions on corporations particularly.

47. First, the prior-board-approval requirement does not apply to political entities. *See id.* § 404(3)(b). Second, in section 404(2)(a), Iowa uses the undefined term “entity” rather than the defined term “person,”¹⁸ but elsewhere in section 404 uses the term “person.” *Id.* § 404(3) (“person . . . shall file an independent expenditure statement”), (6) (“person . . . shall comply with the attribution requirements”), (7) (“person . . . shall not engage . . . an advertising firm”). So the term “entity” used in section 404(2)(a) cannot be read to be synonymous with “person” as defined in section 102(17). Third, to comply with Iowa law, an “entity” that makes an independent expenditure must file an “independent expenditure statement” with the Board, which must contain, among other things, a “certification by an officer of the *corporation*” that the board of directors or other governing body expressly authorized the independent expenditure. *Id.* § 404(5)(g) (emphasis added). The statute does not mention any entity other than a corporation. Fourth, and most tellingly, the Board’s prescribed form for filing an independent expenditure

¹⁸ “Person” is broadly defined to mean “any individual, corporation, . . . or any other legal entity.” *Id.* § 68A.102(17).

statement (**Ex. 1**) requires the person signing the form to certify that “[i]f this expenditure was made by a *corporation*,” the board of directors or other governing body expressly authorized it. **Ex. 1** (emphasis added). The form, like the statute it is based on, makes no mention of any entity other than a corporation. If there were any doubt, based on the statutory scheme alone, that section 404(2)(a) targets corporations, the Board’s implementation of that section through its published form shows that in practice only corporations will have to comply with the prior-board-approval requirement.

48. The prior-board-approval requirement violates the First Amendment’s guarantee of freedom of speech and association. *Citizens* held that the government may not restrict a speaker’s First Amendment freedoms “simply because the speaker is an association that has taken on the corporate form.” 130 S. Ct. at 904–08. So the corporate form, alone, poses no constitutionally cognizable harm justifying special regulation. *Id.* Thus, as to any interest Iowa might advance in defense of its statute, *Citizens* makes clear that the prior-board-approval requirement is underinclusive because, if for no other reason, it does not impose similar burdens on non-corporate groups.

49. Nor does the prior-board-approval requirement advance any state interest in protecting dissenting shareholders because it does not require shareholder approval, but rather, board-of-director approval. *Citizens* made clear that regulation based on shareholder protection would impermissibly allow the Government to regulate media corporations, 130 S. Ct. at 911, that there is “little evidence of abuse that cannot be corrected by shareholders ‘through the procedures of corporate democracy,’” *id.* (citation omitted), and that, as to any shareholder-protection interest, regulation was “overinclusive because it covers all corporations, including nonprofit corporations and for-profit corporations with only single shareholders. As to other corporations, the remedy is

not to restrict speech but to consider and explore other regulatory mechanisms. *The regulatory mechanism here, based on speech, contravenes the First Amendment.*” *Id.* (emphasis added). The prior-board-approval requirement is not protecting a corporation’s shareholders. In fact, by singling out the core political speech of incorporated associations for special, unjustified regulation, it is detrimental to the associational rights of a corporation’s shareholders.

50. Plaintiff IRTL is a non-profit, non-stock corporation with no shareholders to “protect.” IRTL has donors, not shareholders. And even if IRTL’s donors were deemed to be analogous to a corporation’s shareholders, they are in no need of a state regulation preventing IRTL from making independent expenditures without their consent because IRTL is an ideological corporation and its donors “are fully aware of its political purposes, and in fact contribute precisely because they support those purposes.” *MCFL*, 479 U.S. at 260–61. If Iowa desires to make donors aware that their funds could be used to promote or defeat candidates, it could “simply requir[e] that contributors be informed that their money may be used for [such purposes].” *Id.* at 261.

51. Even if section 404(2)(a) were interpreted to apply evenly to corporations and non-corporations, it impermissibly burdens IRTL’s ability to select the most effective means of advancing its cause. It unconstitutionally burdens First Amendment association rights by dictating, without constitutional justification, the inner workings and decision-making process of a citizen-group engaged in core political speech. The First Amendment protects speakers’ rights “not only to advocate [their] cause but also to select what they believe to be the most effective means for so doing.” *Meyer v. Grant*, 486 U.S. 414, 424 (1988); *see also Cal. Democratic Party v. Jones*, 530 U.S. 567, 581 (2000) (“We have consistently refused to overlook an unconstitutional restriction upon some First Amendment activity simply because it leaves other First

Amendment activity unimpaired.”). A corollary to this principle is that the mere “fact that an election procedure can be met” does not mean it is constitutionally permissible. *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 592 (6th Cir. 2006); *accord Anderson v. Celebrezze*, 460 U.S. 780, 791 n.12 (1983).

52. Iowa’s requirement also violates the Equal Protection Clause of the Fourteenth Amendment because it unconstitutionally burdens the speech-related activities of corporations while not similarly regulating labor unions and other entities, such as LLCs and general partnerships, that are similarly situated. “The Equal Protection Clause requires that statutes affecting First Amendment interests be narrowly tailored to their legitimate objectives.” *Police Dep’t v. Mosley*, 408 U.S. 92, 101 (1972). Here, though corporations and other organized associations are similarly situated, Iowa has targeted only corporations with its prior-board-approval requirement. The requirement therefore violates the Fourteenth Amendment’s guarantee of equal protection of the laws. *See Dallman v. Ritter*, 225 P.3d 610, 634–35 (Colo. 2010) (finding that corporations and unions were similarly situated and striking, under strict scrutiny, a political-speech-restriction regulation that treated them disparately).

53. Because Iowa cannot show that this provision is narrowly tailored to a compelling interest, it is unconstitutional, facially and as applied to IRTL and its intended activities, because it violates First Amendment free speech and association guarantees and the Fourteenth Amendment equal-protection guarantee.

Prayer for Relief

Wherefore, IRTL prays for the following relief:

1. Declaratory judgment in its favor that each of the challenged provisions is unconstitutional (as challenged);

2. Preliminary and permanent injunctions enjoining Defendants, all county attorneys, and all successors in office, from enforcing all challenged provisions (as challenged) against IRTL and its planned activities, and all other entities similarly situated;

3. In the alternative, a declaratory judgment that the challenged provisions have a tailored and objective bright line meaning that conforms to constitutional requirements;

4. Costs and attorney fees pursuant to any applicable statute or authority; and


5. Any other relief this Court in its discretion deems just and appropriate.

September 7, 2010

Respectfully Submitted,

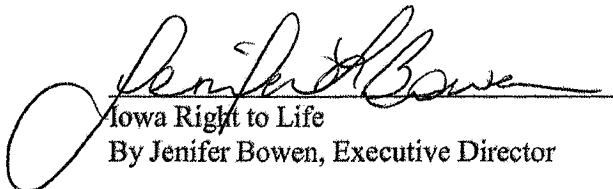
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Verification by Iowa Right to Life

I, Jenifer Bowen, declare as follows: I am executive director of Iowa Right to Life and have personal knowledge of the organization's activities, including those in this complaint. If called upon, I would competently testify as to them. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this complaint concerning the organization are true.


Iowa Right to Life
By Jenifer Bowen, Executive Director

August 24, 2010