

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

Iowa Right to Life Committee, Inc.)	
)	
Plaintiff,)	No. 4:10-cv-00416
)	
vs.)	
)	
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 Tillitson, in their official)	
capacities as Iowa Ethics and Campaign)	DEFENDANTS’ RESPONSE
Disclosure Board Members; and John)	TO PLAINTIFF’S MOTION FOR
Sarcone in his official capacity as Polk)	PRELIMINARY INJUNCTION
County Attorney,)	
)	
Defendants.)	
)	

Introduction

Iowa officials put new state laws in place on the heels of the United States Supreme Court recent decision in *Citizens United v. Federal Election Commission*, 130 S.Ct. 876 (2010), but – like the United States Supreme Court itself – left standing an existing ban on direct corporate contributions to candidates. The Iowa Right to Life Committee, Inc. (“IRTL”) now asks this Court to enjoin the enforcement of this recently enacted state statute and newly promulgated administrative rules that authorize independent expenditures by corporations and to strike down a long-standing statutory

ban on direct corporate contributions to candidates. Arguing in support of this extraordinary relief, IRTL inaccurately characterizes the Iowa disclosure requirements for independent expenditures as “PAC-style” regulation, invokes the wrong standard of review on the constitutional issues, and urges this court to break new constitutional ground by striking down the ban on direct corporate contributions to candidates. A careful analysis of the legal issues demonstrates that IRTL is not entitled to the relief it seeks: the Iowa law imposing disclosure requirements for independent expenditures is constitutionally sound and there is no legal basis to invalidate the ban on direct corporate contributions to candidates.

Background

In *Citizens United*, the United States Supreme Court held in a 5-4 decision that corporations have a First Amendment right to make independent expenditures to expressly advocate for or against the nomination or election of a candidate for office. Significantly, the Court also held that disclosure requirements, including reporting requirements which facilitate disclosure, are constitutional with respect to those independent expenditures. *Id.* at 914-16; *see also id.* at 943 (Stevens, J., dissenting in part and joined by three other justices) (recognizing that majority opinion upheld “disclaimer, disclosure and reporting requirements”); *id.* at 980 (Thomas, J., dissenting in part) (stating that majority opinion “does not go far enough” because “disclosure, disclaimer and reporting requirements” are unconstitutional). By a vote of 8-1, therefore, the Supreme Court upheld the disclosure requirements challenged in *Citizens United*.

Once the Supreme Court issued its ruling, Iowa lawmakers and state officials acted swiftly to change state law. *See generally* Affidavit of W. Charles Smithson, attached as Exhibit 1 to this Response. On March 1, 2010, the Senate passed SF 2354 with overwhelming bipartisan support 48-1. Senate Journal at p. 615. The House soon followed, and passed its version on March 23rd by a vote of 98-0. House Journal at p. 1181. The next day, the Senate concurred with the House amendment 50-0 and sent the bill to the Governor for signature. Senate Journal at p. 966. The Governor signed the bill on April 8, 2010, Senate Journal at p. 1074, and the bill became effective upon enactment. Senate File 2354, 83rd G.A., 2d. Sess., § 7. In order to expedite the implementation of the bill before the statewide primary election in June, the General Assembly expressly authorized promulgation of emergency rules by the Ethics and Campaign Disclosure Board (“the Board”). SF 2354, § 6. New rules became effective on May 17, 2010. *See* Vol. XXXII Iowa Administrative Bulletin, No. 25, at p. 2706-14.

Senate File 2354 amends Iowa Code chapter 68A to require any person, other than a committee such as a PAC, party committee, or candidate that is already required to register, to file an independent expenditure statement if that person makes one or more independent expenditures in excess of \$750. *See* Iowa Code § 68A.404(3). The independent expenditure statement must be filed within 48 hours of making the expenditure. *See id.* § 68A.404(4)(a). In addition, an initial independent expenditure

report must be filed at the same time as the independent expenditure statement. *See id.*¹

After the initial filings, the individual or organization is required to file subsequent independent expenditure reports “according to the same schedule as the office or election to which the independent expenditure was directed.” *Id.*²

Finally, if the person or entity filing the independent expenditure statement and report determines that it will make no more independent expenditures, the Board must be notified within 30 days by the filing of a termination notice. Iowa Code § 68A.402B(3).

¹ Although the statute requires a "statement" and a "report," the Board has combined both into one form that is submitted electronically through the Board's website. *See* 351 Iowa Admin. Code 4.27(2). The independent expenditure statement for organizations need contain only the following seven pieces of information: identification of the individuals or persons filing the statement; a description of the position advocated by the individuals or persons with regard to the clearly identified candidate or ballot issue; identification of the candidate or ballot issue benefitted by the independent expenditure; the dates on which the expenditure or expenditures took place or will take place; a description of the nature of the action taken that resulted in the expenditure or expenditures; the fair market value of the expenditure or expenditures; and a certification by an officer of the corporation that the board of directors, executive council, or similar organizational leadership body expressly authorized the independent expenditure or use of treasury funds for the independent expenditure by resolution or other affirmative action within the calendar year when the expenditure was incurred. Iowa Code § 68A.404(5)(a)-(g). The Board created Form Ind-Exp-O for organizations such as IRTL that make independent expenditures. A sole individual would use Form Ind-Exp-I. *See* 351 Iowa Admin. Code 4.27 (first unnumbered paragraph).

² The next report due for gubernatorial candidates after October 1 is October 19 (covering activity from July 15 through October 14). Iowa Code § 68A.402(2)(a). In addition, the person making the independent expenditure would be required to file a supplementary report the Friday before the general election which this year falls on October 29, if the person making the independent expenditure either raises or expends more than \$1,000 for an independent expenditure on or after October 15. *See* Iowa Code § 68A.404(3)(a)(1). Thus, an organization such as IRTL would have two reporting obligations if it were to make an independent expenditure between today and October 14 as alleged in its Verified Complaint -- the initial statement within 48 hours and the October 19 report. If it engaged in subsequent independent expenditure activity, it would be required to make a supplemental filing the Friday before the general election if the activity raised or spent more than \$1,000.

As with the independent expenditure statement, the termination notice is filed electronically on the Board's website. Thus, if IRTL were to make only one independent expenditure on October 1, IRTL would have the option of filing its independent expenditure statement and notice of termination at the same time. IRTL would then be relieved of any ongoing reporting obligation.

Since SF 2354 became effective on April 8, the Board has issued five Advisory Opinions to persons in the regulated community further explaining the application of SF 2354. *See* Smithson Affidavit, paragraph 7. These Advisory Opinions are available to the public and posted on the Board's website.³ Such communication is to be expected when the law has been changed to allow corporate political activity, and shows that far from being chilled, at least some corporations simply wanted to comply. Indeed, the Board has explicitly stated that independent expenditure committees are not PACs: "The Board will call an organization filing an independent expenditure an 'independent expenditure committee' but this type of committee will be exempt from a number of the disclosure requirements required of other committees." *Op. Iowa Ethics & Campaign Disclosure Board 2010-05 (April 29, 2010).*⁴ The most recent Advisory Opinion was

³ Indeed, on April 29, 2010, Lead Counsel for the Plaintiff--representing a different client--sought such an opinion. *See Op. Iowa Ethics & Campaign Disclosure Board 2010-03 (April 29, 2010).* This Opinion is cited by Plaintiff in its argument that the Independent Expenditure disclosure requirement somehow transforms IRTL into a PAC. *See* Plaintiff's Brief in Support of Motion for Preliminary Injunction at p. 6. Plaintiff actually cites Opinion 2010-5, but it is clear that Opinion 2010-3 is the correct opinion.

⁴ It is noteworthy that Plaintiff has already established a "political committee" under Iowa law which has been in existence since at least 2000. *See* Smithson Affidavit, ¶ 14.

issued to AFA Action, Inc. and its committee Iowa for Freedom on September 8, 2010. *See* Op. Iowa Ethics & Campaign Disclosure Board 2010-07. This corporation, AFA Action, Inc., acting through its committee Iowa for Freedom, has now filed independent expenditure statements with the Board.

Argument

IRTL seeks a preliminary injunction pursuant to Rule 65 to suspend the state statute and the rules that have been in effect in Iowa for several months. The burden of establishing the propriety of a preliminary injunction is on IRTL. *See Baker Elec. Coop., Inc. v. Chaske*, 28 F.3d 1466, 1472 (8th Cir. 1994) (citing *Modern Computer Sys., Inc. v. Modern Banking Sys., Inc.*, 871 F.2d 734, 737 (8th Cir. 1989) (en banc)). A preliminary injunction is an extraordinary form of relief and must be carefully considered. *See Calvin Klein Cosmetics, Corp. v. Parfums de Coeur, Ltd.*, 824 F.2d 665, 667 (8th Cir. 1987). The power to grant a preliminary injunction has been called “an awesome power” that “necessarily requires the Court to analyze the record carefully to determine whether Plaintiff has shown it will be irreparably harmed absent the issuance of the requested relief.” *Mediacom Communications Corp. v. Sinclair Broadcast Group, Inc.* 460 F. Supp. 2d 1012, 1017 (S.D. Iowa 2006).

This court applies a four-part test to determine if preliminary injunctive relief is appropriate. *Dataphase Systems, Inc. v. C L Systems, Inc.*, 640 F.2d 109 (8th Cir. 1981) (en banc). The test requires examination of the following factors: (1) the threat of irreparable harm to the movant; (2) the state of the balance between this harm and the

injury that granting the injunction will inflict on other parties and litigants; (3) the probability that the movant will succeed on the merits; and (4) the public interest. *Id.* at 113. In the present case, each of these factors establish that the extraordinary relief IRTL seeks should be denied.

I. IRTL is Unlikely to Succeed on the Merits of its Constitutional Claims.

“In a First Amendment case the likelihood of success on the merits is often a determining factor” in weighing whether a preliminary injunction should issue. *See Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008). When a preliminary injunction is sought to enjoin implementation of a “duly enacted state statute” courts must make “a threshold finding that a party is likely to prevail on the merits.” An assessment of the likelihood of success on the merits is intended to be a “rigorous standard . . . to ensure that preliminary injunctions that thwart a state's presumptively reasonable democratic processes are pronounced only after an appropriately deferential analysis.” *Planned Parenthood Minnesota, North Dakota, South Dakota v. Rounds*, 530 F.3d 724, 732 -733 (8th Cir. 2008). IRTL cannot meet the threshold showing that it is likely to prevail on the merits which would cause the court to proceed to weigh the remaining *Dataphase* factors. *See Id.* at 732.

Iowa law does not preclude IRTL from making any independent expenditures. At issue in this litigation is whether the disclosure requirements imposed under Iowa law for independent expenditures are so unjustifiably burdensome as to be unconstitutional. IRTL is unlikely to succeed on the merits of this argument.

A. Disclosure Obligations Under Iowa Law for Independent Expenditures Are Constitutional.

Disclosure requirements have been repeatedly upheld in the courts. In *Citizens United* the United States Supreme Court reasoned that “[d]isclaimer and disclosure requirements *may burden* the ability to speak, but they ‘impose no ceiling on campaign related activities’ and ‘do not prevent anyone from speaking.’” *Id.* at 914 (citations omitted; emphasis added). The Court further stated that “the public has an interest in knowing who is speaking about a candidate shortly before an election,” and this “informational interest alone is sufficient to justify” disclosure. *Id.* at 915-16. The Court discussed the vitally important requirement of disclosure as follows:

With the advent of the Internet, *prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters.* Shareholders can determine whether their corporation’s political speech advances the corporation’s interest in making profits, and citizens can see whether elected officials are “‘in the pocket’ of so-called moneyed interests.” The First Amendment protects political speech; and *disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.*

Id. at 916 (citation omitted; emphasis added). *See also Buckley v. Valeo*, 424 U.S. 1, 14-15, 96 S. Ct. 612, 632 (1976) (“In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential, for the identities of those who are elected will inevitably shape the course that we follow as a nation.”).

Plaintiff contends that Iowa's disclosure provisions are subject to "strict scrutiny". Plaintiff's Brief at 8-9. This is plainly not the case. In a decision that came down after *Citizens' United*, the Supreme Court made unequivocally clear that "exacting scrutiny" is the proper standard for reviewing disclosure requirements. In *Doe v. Reed*, 130 S. Ct. 2811 (2010), the Court upheld against a facial challenge a statute that treated petition signatures as public records, stating: "We have a series of precedents (citing *Citizens' United*, *Buckley v. Valeo*, and *Davis v. FEC*) considering First Amendment challenges under what has been termed "exacting scrutiny". The Court went on to state, as it had before, that "exacting scrutiny" requires only a 'substantial relationship' between the disclosure requirement and a 'sufficiently important' governmental interest. The Iowa provisions clearly meet that test. Plaintiff's contention that Iowa's requirements are stricter than the federal requirements, dubious in itself, is quite beside the point under an exacting scrutiny standard.

In the earlier decisions of *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612 (1976), and *McConnell v. FEC*, 540 U.S. 93, 124 S. Ct. 619 (2003), the Court identified two other sufficiently important governmental interests to justify disclosure requirements, *i.e.*, deterring and avoiding the appearance of actual corruption and gathering data to enforce other electioneering restrictions. *McConnell*, 540 U.S. at 196, 124 S. Ct. at 690 (citing *Buckley*, 424 U.S. at 67-68, 96 S. Ct. at 657-58).

Following *Citizens United*, the D.C. Court of Appeals in *Spechnow.org v. FEC*, 599 F.3d 686, 696-98 (D.C. Cir. 2010), upheld disclosure and related organizational and

reporting requirements on PACs under federal law. In so doing, the court noted that “[t]he supreme court has consistently upheld organizational and reporting requirements against facial challenge” to provide “the electorate with information about the sources of political campaign funds.” *Id.* at 696 (citation omitted). The court cited to *Citizens United* and stated that “the government may point to any ‘sufficiently important’ governmental interest that bears a ‘substantial relation’” to the requirements. *Id.* The court concluded that “the public has an interest in knowing who is speaking about a candidate and who is funding that speech, no matter whether the contributions were made towards administrative expenditures or independent expenditures.” *Id.* at 698.

If IRTL chooses to make independent expenditures in this state, Iowa law effectuates the disclosure of information to the public that *Citizens United* and other Supreme Court opinions have recognized is a sufficiently important governmental interest. Contrary to IRTL’s assertion, Iowa law does not impose PAC-style requirements on corporations, but simply facilitates disclosure to provide necessary information to the public regarding independent expenditures, including “sources of election-related spending.” *See Citizens United*, 130 S. Ct. at 914. The filing of independent expenditure statements within 48 hours after the initial independent expenditure is substantially related to the important government interest of providing information to the public regarding independent expenditures. *See, e.g., Alaska Right to Life Comm. v. Miles*, 441 F.3d 773, 791 (9th Cir. 2006) (stating that independent expenditure organization registration in conjunction with reporting requirements “are

justified by compelling state interests”) *cert. denied*, 549 U.S. 886 (2006); *National Org. for Marriage v. McKee*, 666 F. Supp.2d 193, 207 n.78 (D. Me. 2009) (stating registration requirement furthers a “compelling governmental interest”).

Information in the combined independent expenditure statement and report tells the public basic information about the person filing the form, the candidate benefitted and the position advocated with regard to that candidate along with the date, fair market value and nature of the independent expenditure. *See* 351 Iowa Admin. Code 4.27(2). This information is consistent with disclosures that have been upheld by the courts. *See, e.g., National Right to Life Political Comm. v. Connor*, 323 F.3d 684, 695 (8th Cir. 2003) (upholding treasurer requirement and stating that it “further[s] Missouri’s compelling interest in ‘preserving the integrity of the electoral process’ by ensuring ‘that each committee provides an individual who is accountable for compliance with the provisions of the disclosure law . . .’”) (citation omitted); *McKee*, 666 F. Supp.2d at 207 (concluding that plaintiffs could not show a likelihood that treasurer requirement was unconstitutional and stating that the requirement “provides a contact person”); *National Right to Life Political Action v. Lamb*, 202 F. Supp.2d 995, 1020 (W.D. Mo. 2002) (upholding treasurer requirement and stating “the treasurer is the critical official that the [Missouri enforcement agency] must reach to investigate and address violations of the campaign finance law”).

Requiring additional filings “according to the same schedule as the office or election to which the independent expenditure was directed” is substantially related to the

critically important government interest of public disclosure. The subsequent reports provide timely disclosure to the electorate “about the sources of election-related spending.” *Citizens United*, 130 S. Ct. at 914 (citation omitted). Furthermore, as the Court stated in *Citizens United*: “prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters. For IRTL, the board of directors can determine whether their corporation’s political speech advances the corporation’s interest, and citizens can see whether elected officials are ‘in the pocket’ of so-called ‘monied interests.’” *Id.* at 916 (citation omitted).

The recurring reporting requirement is at the heart of the government interest of “help[ing] its citizens ‘make informed choices in the political marketplace.’” *Id.* at 914 (citation omitted) (upholding federal electioneering communications disclosure and related reporting requirements); *see also Miles*, 441 F.3d at 791 (upholding recurrent reporting requirements as being “justified by compelling state interests”); *North Carolina Right To Life Comm. Fund for Indep. Political Expenditures v. Leake*, 524 F.3d 427, 440 (4th Cir. 2008) (upholding requirement that “eight reports be filed within two-and-a-half month period preceding the election,” and stating that reporting requirements have a “substantial relationship to an important state interest”) *cert. denied*, 129 S. Ct. 490 (2008); *McKee*, 666 F. Supp.2d at 208 (concluding that “plaintiffs cannot show a likelihood of success on their challenge to Maine’s recurrent reporting requirement”); *Speechnow.org*, 599 F.3d at 600 (upholding federal PAC reporting requirements).

B. No “Major Purpose” Test Must be Met for Imposing Disclosure Obligations on Corporations that Make Independent Expenditures.

Plaintiff’s Brief makes several references to *Buckley*’s so called “major purpose requirement”, as if it were a relevant constitutional imperative. It is not relevant because the statute involved here imposes only disclosure requirements, not a requirement that an organization form a Political Action Committee. Moreover, in *Buckley*, the term was used only as a tool of statutory interpretation, not as part of First Amendment analysis. *See Buckley*, 424 U.S. at 74-82. *Buckley* itself said federal disclosure requirements were appropriate where, as here, the expenditures relate to the election of candidates. *Buckley*, supra at 80. Finally, *Citizens United* made clear that disclosure requirements are not limited to “express advocacy”. *Citizens United*, 130 S. Ct. at 915. Plaintiff’s argument is very wide of the mark.

C. The Ban on Direct Corporate Contributions to Candidates is Constitutional.

IRTL also erroneously asserts that the provision in Iowa law precluding corporations from making contributions to candidates is unconstitutional. *See Iowa Code* § 68A.503 (1). *Citizens United* carefully distinguished independent expenditures from contributions to candidates. As the Court stated:

The *Buckley* Court explained that the potential for quid pro quo corruption distinguished direct contributions to candidates from independent expenditures. The Court emphasized that “the independent expenditure ceiling . . . fails to serve any substantial governmental interest in stemming the reality or appearance of corruption in the electoral process,” because “[t]he absence of prearrangement and coordination . . . alleviates the danger

that expenditures will be given as a quid pro quo for improper commitments from the candidate.”

130 S. Ct. at 901-02 (citations omitted); *see also Siefert v. Alexander*, 2010 WL 2346659, *12 (7th Cir. June 14, 2010) (“We note *Citizens United*, rather than overruling *Buckley*, noted and reinforced the distinction between independent expenditures on behalf of candidates and direct contributions to candidates.”) (plaintiff represented by same counsel as in this case); *Speechnow.org v. FEC*, 599 F.3d 686, 695 (D.C. Cir. 2010) (“Limits on direct contributions to candidates, ‘unlike limits on independent expenditures, have been an accepted means to prevent *quid pro quo* corruption.’”) (quoting *Citizens United*); *Minnesota Chamber of Commerce v. Gaertner*, 2010 WL 1838362, *2 (D. Minn. May 7, 2010) (“Notably, the [plaintiff] does not take issue with the statute’s prohibition on direct expenditures and professes no intent to attempt to contribute directly to any candidate’s campaign fund or the like.”).

Furthermore, in *FEC v. Beaumont*, 539 U.S. 146, 149-63, 123 S. Ct. 2200, 2203-11 (2003), the U.S. Supreme Court expressly upheld the federal law prohibiting corporate contributions to candidates and political parties. *Citizens United* did not overrule *Beaumont*. In a very recent decision in *Green Party of Connecticut v. Garfield*, 2010 WL 2737134, *6 (2d Cir. July 13, 2010) the court concluded as follows:

Beaumont and other cases applying the closely drawn standard to contribution limits remain good law. Indeed, in the recent *Citizens United* case, the Court overruled two of its precedents and struck down a federal law banning independent campaign *expenditures* by corporations, but it explicitly declined to reconsider its precedents involving campaign *contributions* by corporations to candidates for elected office.

(Emphasis in original.)

The court in *Thalheimer v. City of San Diego*, 2010 WL 596397, *13-15 (S.D. Cal. Feb. 16, 2010), similarly rejected a claim by challenging a ban on corporate contributions to candidates. In so doing, the court stated:

In declining to extend the rationale of *Citizens United* to contribution limits, the Court finds significant “the careful line that *Buckley* drew to distinguish limits on contributions to candidates from limits on independent expenditures on speech.” See No. 08-205 at 42 (Roberts, C.J., concurring). “Judicial deference is particularly warranted where, as here, we deal with a congressional judgment that has remained essentially unchanged throughout a century of ‘careful legislative adjustment.’” *Beaumont*, 539 U.S. at 162 n.9.

Id. at *15.

Citizens United did not somehow implicitly overrule *Beaumont*. See *Agostini v. Felton*, 521 U.S. 203, 237, 117 S. Ct. 1997, 2017 (1997) (reiterating that lower courts should not “conclude our more recent cases have, by implication, overruled an earlier precedent”); see also *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484, 109 S. Ct. 1917, 1921-22 (1989) (“If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.”).

D. Requiring Authorization by a Corporate Board of Directors for Independent Expenditures is Constitutional.

IRTL’s equal protection challenge regarding alleged different treatment of other associational groups also fails from the outset due to binding Supreme Court precedent.

A “threshold” requirement for “a viable equal protection claim” is that the plaintiff “is similarly situated to those who allegedly receive favorable treatment.” *Klinger v. Department of Corrections*, 31 F.3d 727, 731 (8th Cir. 1994), *cert. denied*, 513 U.S. 1185 (1995). In *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 665-66, 110 S. Ct. 1391, 1400-01 (1990), the Supreme Court concluded in rejecting an equal protection claim that there are “crucial differences” between corporations and unions with respect to use of general funds for political purposes because, unlike corporate shareholders, union members who disagree with a union’s political activities can decline to fund those activities. *Citizens United* did not address, and thus did not overrule, this equal-protection aspect of *Austin*.

IRTL’s equal protection challenge also fails to meet the threshold requirement of differential treatment. *See, e.g., Gilmore v. County of Douglas*, 406 F.3d 935, 937 (8th Cir. 2005) (stating that to make an equal protection claim, plaintiff “must establish that some government action caused [it] to be treated differently from others similarly situated”). Contrary to IRTL’s contention, Iowa law does not treat corporations differently than other organized associations. Under Senate File 2354 other entities are required to “obtain 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. . . .” Iowa Code § 68A.404(2)(a).

For purposes of First Amendment analysis, a “viewpoint” is speech motivated by an “ideology or the opinion or perspective of the speaker” and impermissible “viewpoint”

regulation occurs when the speaker's particular ideology, opinion or perspective is "the rationale for the restriction." *Rosenberger v. Rector & Visitors of the Univ. of Virginia*, 515 U.S. 819, 829, 115 S. Ct. 2510, 2516 (1995). Corporations do not share a single political ideology and the rationale for prohibiting corporate contributions is not to suppress such a non-existent common ideology. *See, e.g., Citizens United*, 130 S. Ct. at 912 ("Corporations, like individuals, do not have monolithic views.").

For all of the foregoing reasons, IRTL has not shown and cannot show that they are likely to succeed on the merits. This *Dataphase* factor is dispositive of IRTL's motion and therefore the motion must be denied. *See Planned Parenthood*, 530 F.3d at 731. In any event, application of the remaining *Dataphase* factors do not support Plaintiffs' motion.

II. IRTL Will Not Suffer Irreparable Harm Absent an Injunction.

If there is any harm to IRTL, it is minimal. Plaintiff's complaint purports to allege that it is "chilled" by the disclosure requirements. It also purports to make a "facial" challenge to them. But its "chilling effect" allegations are nothing more than assertion, which is an insufficient basis for injunctive relief. Defendants contend, on the contrary, that it is entirely unrealistic to suggest that a corporation, an artificial entity, can be chilled in the same manner or to the same extent as an individual person. Nor does plaintiff provide authority that the same standards apply to corporations. Accordingly, in balancing the equities, the Court should not assume that any other entities' interests are affected.

Moreover, IRTL's alleged need for this expedited relief is based on their own delay in commencing this litigation. *Citizens United* was decided on January 21, 2010. Senate File 2354 amending Iowa law were signed into law on April 8, 2010 and became effective on enactment. Yet, IRTL waited until September 2010 to file their lawsuit. This delay is particularly inexplicable with regard to IRTL's challenge to the prohibition on corporate contributions to candidates. This prohibition has been in effect for many years and the 2010 legislation did not relate to this prohibition.

The harm to the State, by contrast, is substantial. The State oversees elections for its various elected officials. It is critical that financing of those elections be disclosed so that "transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages." *Citizens United*, 130 S. Ct. at 916. IRTL's requested relief would invalidate any reporting and related disclosure of corporate independent expenditures to the obvious detriment of the electorate.

III. The Balance of the Equities Favors Leaving Disclosure Requirements and a Ban on Corporate Contributions to Candidates in Place.

In addition, the fairness of an election is furthered by the use of standards and rules that are applicable to the entire election season. To change those standards and rules during the course of the election season would work an injustice to the electorate and candidates. This is especially true here because IRTL did not expeditiously commence this case.

Indeed, the purpose of issuing a preliminary injunction in a lawsuit is to preserve the status quo and to prevent irreparable harm until the court has the opportunity to hold a more extensive hearing on the merits. *See Granny Goose Foods, Inc. v. Teamsters*, 415 U.S. 423, 439, 94 S. Ct. 1113, 39 L. Ed. 2d 435 (1974); 42 F.3d 470, 471 (8th Cir.1994). Here, IRTL seeks to upend the status quo by suspending state law which has been in force since April. Thus, the equities here favor denying the relief IRTL seeks.

IV. Enforcing Disclosure Requirements and the Corporate Contribution Ban is in the Public Interest.

For the same reasons, the public interest is served by denying IRTL's motion. IRTL's attempt to gut public disclosure might further their private interests, but certainly not the public interest. The disclosure IRTL attempts to avoid allows the public to be more informed in making "choices in the political marketplace." *Citizens United*, 130 S. Ct. at 914. Additionally, it would clearly be in the public interest for any constitutional issues generated by plaintiff's Complaint to be addressed with due reflection on a full record developed with reasonable discovery and appropriate expert testimony.

Conclusion

For all of the foregoing reasons a preliminary injunction should not be granted and the Iowa statute and rules should remain in full force and effect unless and until discovery is conducted and this Court holds a full hearing on the merits of IRTL's constitutional claims.

Respectfully submitted,

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Proof of Service	
The undersigned certifies that the foregoing instrument was served upon each of the persons identified as receiving a copy by delivery in the following manner on September 14, 2010.	
<input type="checkbox"/> U.S. Mail	<input type="checkbox"/> FAX
<input type="checkbox"/> Hand Delivery	<input type="checkbox"/> Overnight Courier
<input type="checkbox"/> Federal Express	<input type="checkbox"/> Other
<input checked="" type="checkbox"/> Electronically	
Signature: <u>/s/ Jeffrey S. Thompson</u>	