Appendix

[***Editing Note:*** *Page numbers from the reported opinion, 717 F.3d 576, are indicated, e.g.,* ****576****. The slip opinion's bolding of citations is omitted.*]

[Filed: 06/13/2013; Entry ID: 4044836]

United States Court of Appeals
For the Eighth Circuit

No. 12-1605

Iowa Right to Life Committee, Inc.
Plaintiff-Appellant

v.

Megan Tooker[*] in her official capacity as Iowa Ethics and Campaign Disclosure Board Executive Director; James Albert; John Walsh; Mary Rueter[**]; Jonathan Roos[**]; Saima Zafar; Carole Tillotson, in their official capacities as Iowa Ethics and Campaign Disclosure Board Members, Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Iowa

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Submitted February 13, 2013
Filed June 13, 2013

Before SMITH, MELLOY, and BENTON, Circuit Judges.

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[*] Substituted as a party for W. Charles Smithson, under Federal Rule of Civil Procedure 25(d),

[**] Substituted as parties for Patricia Harper and Gerald Sullivan, under Federal Rule of Civil Procedure 25(d).

BENTON, Circuit Judge:

Iowa Right To Life Committee, Inc., challenges the constitutionality of several Iowa campaign-finance laws, an administrative rule, and two forms. The district court found IRTL lacked standing to challenge several provisions, but found others constitutional. IRTL appeals, raising facial and as-applied challenges under the First and Fourteenth Amendments. Having jurisdiction under 28 U.S.C. § 291, this court affirms in part, reverses in part, and remands.

I.

IRTL is a non-profit corporation that promotes right-to-life positions. It is not under the control of a candidate. It claims to spend less than half its annual disbursements on "election-related speech" but wants to make independent expenditures and contributions supporting certain candidates.

After *Citizens United v. Federal Election Commission,* 558 U.S. 310 (2010), Iowa amended its campaign-finance laws. *See* Campaign Disclosure—Income Tax Checkoff Act, Iowa Code § 68A.101 *et seq.* For the ***582** 2010 election, IRTL wanted to, but did not, make an independent expenditure over $750 to support the election of a candidate for Attorney General. IRTL also wanted to, but did not, make a $100 contribution to the same candidate. Before the election, IRTL sought to enjoin various provisions of Iowa's new laws.

IRTL's complaint has four counts:

Count 1. The definitions of "political committee" and "permanent organization" may apply to IRTL, violating the First Amendment by imposing political committee ("PAC") status and burdens without regard to whether IRTL's "major purpose" is expressly advocating the nomination or election of candidates. *See* Iowa Code §§ 68A.102(18), 68A.402(9).

Count 2. Iowa's campaign-finance laws impose "PAC-style" burdens on IRTL, in violation of the First Amendment. *See id.* §§ 68A.402B(3), 68A.404(3), (4)(a); Iowa Admin. Code r. 351–4.9(15); Independent Expenditure Statement (Form Ind–Exp–O), https://webapp.iecdb.iowa.gov/IndExpend/ Org_ Independent_ Expend.aspx; Statement of Dissolution (Form DR–3), http://www.iowa.gov/ethics/forms_brochures/forms/forms_download/sch_ dr3.pdf.

Count 3. Iowa's ban on direct corporate contributions to candidates and committees violates the First and Fourteenth Amendments. *See* Iowa Code § 68A.503.

Count 4. Iowa's requirements that a corporation's board of directors authorize independent expenditures in advance, and that an officer of the corporation certify the authorization, violate the First and Fourteenth Amendments. *See id.* § 68A.404(2)(a)-(b), (5)(g); Form Ind–Exp–O.

The district court denied IRTL's request for preliminary injunction. *Iowa Right To Life Committee, Inc. v. Smithson,* 750 F.Supp.2d 1020, 1049 (S.D. Iowa). IRTL did not appeal that ruling.

Both parties moved for summary judgment. On Counts 2 and 3, the district court found constitutional the challenged provisions, administrative rule, and forms. On Count 4, the court found IRTL lacked standing to bring its First Amendment challenge and part of its Fourteenth Amendment challenge, and found the provisions otherwise constitutional under the Fourteenth Amendment. The court granted summary judgment to Iowa on Counts 2 through 4.

On Count 1, the court certified two questions to the Iowa Supreme Court:

1) If a corporation that has not previously reg-

> istered as a political committee makes independent expenditures aggregating over $750 in a calendar year, does that corporation become, by virtue of such expenditures: (1) an "independent expenditure committee," as that term is defined in Iowa Admin. Code r. 351–4.1(1)(d); (2) a "political committee," as that term is defined by Iowa Code § 68A.102(18); or (3) both?
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> 2) If a corporation that has not previously registered as a political committee and that "was originally organized for purposes other than engaging in election activities" makes independent expenditures aggregating over $750 in a calendar year, does that corporation become, by virtue of such expenditures, a "permanent organization" pursuant to Iowa Code § 68A.402(9)?
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> The Iowa Supreme Court answered:
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> 1. An independent expenditure committee.
> 2. No.

Iowa Right To Life Comm., Inc. v. Tooker, 808 N.W.2d 417, 418 (Iowa 2011). Based on those answers, the district court found ***583** IRTL lacked standing to challenge the provisions, and granted summary judgment to Iowa.

II.

This court reviews de novo a grant of summary judgment. *Minnesota Citizens Concerned for Life, Inc. v. Kelley,* 427 F.3d 1106, 1109 (8th Cir. 2005). "This court affirms where there are no genuine issues of material fact, and judgment is appropriate as a matter of law." *Id.*

A.

In Count 1, IRTL challenges the terms "political committee" and "permanent organization" as applied to it and other groups whose "major purpose" is not "the nomination or election of a candidate." *See Buckley v. Valeo,* 424 U.S. 1, 79 (1976).

> "Political committee" means ... [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 the nomination, election, or defeat of a candidate for public office, or to expressly advocate the passage or defeat of a ballot issue.

Iowa Code § 68A.102(18). A PAC has several requirements: filing a "statement of organization," *id.* § 68A.201(1), filing disclosure reports, *id.* §§ 68A.401, 68A.402, 68A.402A, appointing a chair and treasurer, *id.* § 68A.203(1)(a)-(b), properly receiving, depositing, and remitting funds, *id.* § 68A.203(1)-(3), segregating PAC funds, *id.* § 68A.203(2)(d), maintaining records, *id.* § 68A.203(3)-(4), and dissolving after "it will no longer receive contributions or make disbursements," *id.* § 68A.402B.

"'[P]ermanent organization' means an organization that is continuing, stable, and enduring, and was originally organized for purposes other than engaging in election activities." *Id.* § 68A.402(9). "A permanent organization temporarily engaging in activity described in section 68A.102, subsection 18, shall organize a political committee." *Id.* Then, it is subject to PAC re-

quirements. *Id.*

Alternatively, an entity that makes an "independent expenditure" may become an "independent expenditure committee."

> "[I]ndependent expenditure" means one or more expenditures in excess of seven hundred fifty dollars in the aggregate for a communication that expressly advocates the nomination, election, or defeat of a clearly identified candidate or the passage or defeat of a ballot issue that is made without the prior approval or coordination with a candidate, candidate's committee, or a ballot issue committee.

Id. § 68A.404(1). "A person, other than a committee registered under this chapter, that makes one or more independent expenditures shall file an independent expenditure statement," *id.* § 68A.404(3), an "initial report," and "[s]ubsequent reports," *id.* § 68A.404(3)(a). A person required to file such reports "due to the filing of an independent expenditure statement" is an "independent expenditure committee." Iowa Admin. Code r. 351–4.1(1)(d).

According to IRTL, if it makes independent expenditures over $750, Iowa could deem it a PAC or "permanent organization"—and impose PAC burdens—without applying *Buckley*'s major-purpose test (and thus violate its First Amendment rights). In *Buckley,* the Supreme Court construed the federal definition of a PAC ***584** only to "encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." *Buckley,* 424 U.S. at 79. The Court has "suggested two methods to determine an organization's 'major purpose': (1) examination of the organization's central or-

ganizational purpose; or (2) comparison of the organization's independent spending with overall spending to determine whether the preponderance of expenditures are for express advocacy or contributions to candidates." *Colorado Right to Life Comm., Inc. (CRLC) v. Coffman,* 498 F.3d 1137, 1152 (10th Cir. 2007), *citing Fed. Election Comm'n v. Massachusetts Citizens for Life, Inc. (MCFL),* 479 U.S. 238, 252 n. 6 (1986) (plurality opinion), *and id.* at 262. This "so-called major-purpose test ... limits the reach of the statutory triggers ... for [PAC] status." *Minnesota Citizens Concerned for Life, Inc. (MCCL) v. Swanson,* 692 F.3d 864, 872 (8th Cir. 2012) (en banc) (alteration in original) (citations and internal quotation marks omitted).

Answering the district court's certified questions, the Iowa Supreme Court held that a corporation not previously registered as a PAC—such as IRTL—that makes independent expenditures over $750 in a calendar year, becomes an independent expenditure committee, not a PAC or permanent organization. *IRTL,* 808 N.W.2d at 418. The state court concluded that "the effect of the legislation is to permit corporations like IRTL to engage in express advocacy for or against candidates without becoming political committees so long as they comply with section 68A.404." *Id.* at 429. After the Iowa Supreme Court's ruling, the district court found IRTL lacks standing to challenge the "political committee" and "permanent organization" definitions, because—based on the record—those terms do not apply to it.

To establish Article III standing, a party must suffer an injury that is "concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling." *Monsanto Co. v. Geertson Seed Farms,* 130 S.Ct. 2743,

2752 (2010). An "injury-in-fact" is "a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement." *St. Paul Area Chamber of Commerce v. Gaertner,* 439 F.3d 481, 485 (8th Cir. 2006) (footnote omitted), *quoting Babbitt v. United Farm Workers Nat'l Union,* 442 U.S. 289, 298 (1979). A party need not expose itself to arrest or prosecution under a criminal statute to challenge it in federal court. *Arkansas Right to Life State Political Action Comm. v. Butler,* 146 F.3d 558, 560 (8th Cir. 1998). But a threat of prosecution must not be "wholly speculative." *St. Paul Area Chamber of Commerce,* 439 F.3d at 485, 487 (citation omitted). A party "must face a credible threat of present or future prosecution under the statute for a claimed chilling effect to confer standing to challenge the constitutionality of a statute that both provides for criminal penalties and abridges First Amendment rights." *Zanders v. Swanson,* 573 F.3d 591, 593 (8th Cir. 2009). "If ... the plaintiff's standing does not adequately appear from all materials of record, the complaint must be dismissed." *Warth v. Seldin,* 422 U.S. 490, 501-02 (1975); *Nat'l Right to Life Political Action Comm. (NRLPAC) v. Connor,* 323 F.3d 684, 689 (8th Cir. 2003) ("It is the responsibility of the complainant clearly to allege facts demonstrating ... [standing]." (citation and internal quotation marks omitted)).

***585** IRTL contends the Iowa Supreme Court's qualification to its answer confers standing:

> This conclusion [that a corporation making independent expenditures aggregating over $750 in a calendar year is only an independent expenditure committee] applies to corporations whose primary or major purpose is *not* the

> type of activity described in section 68A. 102(18)[, defining "political committee"]. As we have previously discussed, IRTL alleges it is such a corporation. We do not hold today that a corporation primarily engaged in campaign activities can avoid political committee status simply because it happens to be a corporation rather than an unincorporated association. We leave that decision for another day.

IRTL, 808 N.W.2d at 430 n. 7 (emphasis in original). According to IRTL, a corporation must have *Buckley*'s major purpose before Iowa can deem it a PAC or permanent organization. IRTL asserts the Iowa Supreme Court does not define what it means by "primary or major purpose," leaving unclear whether *Buckley*'s major-purpose test applies.

IRTL wants Iowa neither to classify it as a PAC, nor to impose criminal penalties. *See* Iowa Code § 68A. 701 ("Any person who willfully violates any provisions of this chapter shall upon conviction, be guilty of a serious misdemeanor."); *see id.* § 903.1(1)(b) (stating a serious misdemeanor may carry a fine up to $1,875 and imprisonment up to one year). To support its alleged injury, IRTL points to Iowa disputing its major purpose at a hearing before the district court: "[IRTL's major purpose is] not undisputed because we have to see what, in fact, their expenditures have been over the course of the organization and quantify it." It also highlights an Iowa Ethics and Campaign Disclosure Board advisory opinion stating the Board "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." Iowa Ethics and Campaign Disclosure Board, Advisory Opinion 2010-03 (April 29, 2010), http://www.iowa.

gov/ethics/legal/adv_opn/2010/10fao03.htm. IRTL concludes it has standing because Iowa might deem it a PAC or permanent organization, chilling its First Amendment right to speak through independent expenditures, even though its major purpose is not expressly advocating the nomination or election of specific candidates.

The Iowa Supreme Court held that when a corporation whose major purpose is not express advocacy makes independent expenditures, it becomes an independent expenditures committee, not a PAC or permanent organization. *See IRTL,* 808 N.W.2d at 418, 429, 430 & n.7. IRTL claims its "major purpose is not and will never be the nomination or election of candidates." It does not face a realistic danger that Iowa will deem it a PAC or permanent organization.

IRTL counters that Iowa has never admitted IRTL's major purpose is *not* express advocacy. Iowa did state that it would have to examine IRTL's expenditures before determining its major purpose. But that is a method the Supreme Court advised for determining an organization's major purpose. *See MCFL,* 479 U.S. at 262. Iowa explains, "It's undisputed that if you just want to make independent expenditures there are no restrictions other than disclosures and registration [for an 'independent expenditure committee']." Iowa further agrees, "[I]f a corporation makes independent expenditures aggregating over [$750], it becomes an independent expenditure com ***586** mittee...." *IRTL,* 808 N.W.2d at 426. Iowa "denies, however, that such an organization would qualify as a political committee under section 68A.102(18)." *Id.* at 426-27, 429-30; *see* Iowa Ethics and Campaign Disclosure Board, Advisory Opinion 2010-03. As the Iowa Supreme Court's opinion makes clear, this conclusion applies to IRTL. *Cf. NRLPAC,*

323 F.3d at 694 (dismissing as unripe a group's challenge to a campaign-finance law that did not explicitly require *Buckley*'s major-purpose test to determine whether an entity was a PAC, in part because the group "was never threatened with enforcement of the PAC-like regulations"). Iowa has not threatened to classify IRTL as a PAC or permanent organization, let alone threatened to so classify it without applying the major-purpose test.

True, the Iowa Supreme Court does not expressly require *Buckley*'s major-purpose test. In its qualification to its answer, the court held that if a corporation's "major purpose is *not* the type of activity described in section 68A.102(18)," it can make independent expenditures without becoming a PAC or permanent organization. *See IRTL,* 808 N.W.2d at 430 & n. 7 (emphasis in original). Under subsection 68A.102(18), a PAC is a person who accepts contributions, makes expenditures, or incurs indebtedness over $750 "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." Iowa Code § 68A.102(18) (emphasis added). The "interests held to justify restricting corporate campaign speech or its functional equivalent do not justify restricting issue advocacy." *Fed. Election Comm'n v. Wisconsin Right To Life, Inc.,* 551 U.S. 449, 457 (2007); *MCFL,* 479 U.S. at 252 n. 6 (plurality opinion); *North Carolina Right to Life, Inc. v. Leake,* 525 F.3d 274, 303 (4th Cir. 2008) (agreeing that an organization cannot be classified as a PAC if its major purpose is issue advocacy); *see also Kelley,* 427 F.3d at 1110 (noting that the Minnesota Supreme Court—to conform a Minnesota campaign-finance statute with *Buckley*—interpreted "political committee" not to mean a group that engages only in "pure issue advocacy,"

citing Minnesota Citizens Concerned for Life, Inc. v. Kelley, 698 N.W.2d 424, 429-30 (Minn.2005)). But IRTL has not alleged that its major purpose is issue advocacy, that it wants to make expenditures over $750 "to expressly advocate the passage or defeat of a ballot issue," or that Iowa claims IRTL's major purpose is issue advocacy. Nor has IRTL made an "overbreadth challenge." *See Davenport v. Washington Educ. Ass'n,* 551 U.S. 177, 190-91 (2007) (holding that the Court "need not answer [the] question [at issue] ... because at no stage of th[e] litigation has respondent made an overbreadth challenge"). Moreover, neither IRTL nor Iowa addressed this "issue advocacy" clause in briefing or at oral argument. Based on the record before this court, the Iowa Supreme Court's qualification to its answer does not confer standing on IRTL.

The standing issue here is similar to that in *NRLPAC.* There, the district court found the campaign-finance statute at issue does not apply to committees that "spend more than $1,500 on Missouri elections in a calendar year." *NRLPAC,* 323 F.3d at 690. The plaintiffs had "not alleged that they intended to spend less than $1,500 ... for the ... election." *Id.* Their evidence that the Missouri Ethics Commission enforced the statute against committees spending more than $1,500 was "unpersuasive." *Id.* The plaintiffs therefore lacked standing to challenge the relevant statutory section. *Id.*

***587** Similarly, in *Kelley,* this court certified a question to the Minnesota Supreme Court to determine whether, under Minnesota's law, the definitions of "political committee" and "political fund" apply to groups engaged only in "pure issue advocacy." *Kelley,* 427 F.3d at 1110. The state court held they did not. *Kelley,* 698 N.W.2d at 430. Because MCCL claimed to engage only

in pure issue advocacy, it lacked standing to challenge the definitions. *Kelley,* 427 F.3d at 1110.

Likewise, IRTL has alleged that its major purpose is not express advocacy. It claims the standing issue differs from that in *Kelley,* because there the state had not questioned MCCL's major purpose. But, as in *NRLPAC,* IRTL's evidence that Iowa will deem it a PAC or permanent organization "is unpersuasive and, at best, amounts to evidence of a conjectural or hypothetical injury." *NRLPAC,* 323 F.3d at 690; *see Zanders,* 573 F.3d at 594 ("It is too speculative for standing purposes to allege that this statute *could* be manipulated." (emphasis in original)); *cf. CRLC,* 498 F.3d at 1145 n. 6 ("Because the Secretary has indicated unequivocally his intent to prosecute CRLC, CRLC has suffered the constitutionally sufficient injury of self-censorship through the chilling of protected First Amendment activity...."). IRTL is free to make independent expenditures over $750 without "either ... significant[ly] chang[ing] ... its operations to obey the regulation, or risk [ing] a criminal enforcement action by disobeying the regulation." *See St. Paul Area Chamber of Commerce,* 439 F.3d at 487 (eventually holding the plaintiffs suffered an injury under the First Amendment, because "they ha[d] been forced to modify their speech and behavior to comply with the [challenged] [s]tatutes"). IRTL cannot establish standing "simply by claiming that [it] experienced a 'chilling effect' that resulted from a governmental policy that does not regulate, constrain, or compel any action on [its] part." *Clapper v. Amnesty Int'l USA,* 133 S.Ct. 1138, 1153 (2013). Because IRTL faces no credible threat of present or future prosecution, it lacks standing to challenge the definitions of "political committee" and "permanent organization."

B.

In Count 2, invoking the First Amendment, IRTL challenges several disclosure requirements as applied to it and other groups "whose major purpose is not nominating or electing candidates." In district court, IRTL challenged the disclosure requirements both facially and as applied. The court upheld the requirements. IRTL maintains only an as-applied challenge on appeal. Iowa claims the challenge is facial.

The "label is not what matters." *Doe v. Reed,* 130 S.Ct. 2811, 2817 (2010); *see Citizens United,* 558 U.S. at 331 ("[T]he distinction between facial and as-applied challenges is not so well defined that it has some automatic effect or that it must always control the pleadings and disposition in every case involving a constitutional challenge."). The "important" inquiry is whether the "claim and the relief that would follow ... reach beyond the particular circumstances of the[ ] plaintiffs." *Reed,* 130 S.Ct. at 2817.

IRTL's claim "has characteristics of both" challenges. *Id.* It seems "as applied" because IRTL complains it was chilled from making a specific expenditure. *Cf. Human Life of Washington, Inc. v. Brumsickle,* 624 F.3d 990, 1021-22 (9th Cir. 2010) ("[The plaintiff] does not provide any evidence to support an as-applied challenge...."). Also, it challenges the law only as applied to itself and "other groups ***588** whose major purpose is not nominating or electing candidates." *Cf. Ctr. for Individual Freedom v. Madigan,* 697 F.3d 464, 475 (7th Cir. 2012) ("This is not a case where a group has actually engaged in a particular form of speech that is subject to regulation and seeks to challenge the applicability of the law to itself and other groups who have engaged in similar expressive activity."). But such groups constitute a broad range of entities, from those

wanting to make a single expenditure of just over $750 in a single election, to those wanting to expend much greater sums in several elections. The claim therefore seems "'facial' in that it is not limited to plaintiff's particular case, but challenges application of the law more broadly." *See Reed,* 130 S.Ct. at 2817.

IRTL contends that, if held unconstitutional as applied to it and similar groups, the law would "still apply to persons with the major purpose of nominating or electing candidates." But Iowa classifies those "persons" as PACs (though the Iowa Supreme Court left open the possibility that a corporation whose major purpose is express advocacy could avoid PAC status, *see IRTL,* 808 N.W.2d at 430 n. 7). *See* Iowa Code § 68A.102(18); *see also IRTL,* 808 N.W.2d at 430 n. 7. A PAC cannot become an "independent expenditure committee": any "person"—including an individual—"*other than a committee registered under this chapter,* that makes one or more independent expenditures" is an "independent expenditure committee." Iowa Code § 68A.404(3); Iowa Admin. Code r. 351–4.1(1)(*d*); *see* Iowa Code § 68A.102(17) ("'Person' means, without limitation, any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, labor union, or any other legal entity."). Thus, the disclosure requirements for independent expenditure committees apply *only* to non-PACs. As such, IRTL's request to invalidate the disclosure requirements as applied to "groups whose major purpose is not nominating or electing candidates" reaches all entities—but not individuals—subject to the challenged disclosure requirements.

"Facial challenges are disfavored because they often rest on speculation ... [and] raise the risk of premature interpretation of statutes on the basis of factually

barebones records." *Phelps-Roper v. City of Manchester, Mo.,* 697 F.3d 678, 685 (8th Cir. 2012) (alteration in original) (citation and internal quotation marks omitted); *see Neely v. McDaniel,* 677 F.3d 346, 350 (8th Cir. 2012) ("[A]pplication of the [overbreadth] doctrine is strong medicine that should be employed sparingly and only as a last resort." (citation and internal quotation marks omitted)). Here, the "claim and the relief that would follow"—invalidating discrete disclosure requirements as applied to IRTL and other non-PAC groups—does not require this court to consider the facial validity of Iowa's disclosure laws. This court can consider each challenged disclosure requirement in isolation, and, if necessary, apply the "normal rule that partial, rather than facial, invalidation is the required course." *See Brockett v. Spokane Arcades, Inc.,* 472 U.S. 491, 502-04 (1985) ("[A] federal court should not extend its invalidation of a statute further than necessary to dispose of the case before it."); *cf. Reed,* 130 S.Ct. at 2817 (holding that the plaintiffs had to satisfy the "standards for a facial challenge" because "the relief that would follow" was "an injunction barring the secretary of state from making [all] referendum petitions available to the public[,] ... reach[ing] beyond the particular circumstances of these plaintiffs" (internal quotation marks omitted)). ***589**

Under Iowa's disclosure laws, an independent expenditure committee must file:

> (1) an "independent expenditure statement" and "initial report," Iowa Code §§ 68A.404(3), 68A.404(4)(a); Iowa Admin. Code rs. 351–4.9(15), 351–4.27(4); Form Ind–Exp–O;
>
> (2) ongoing reports, Iowa Code § 68A.404(3)(a); Iowa Admin. Code r. 351–4.9(15);

(3) a supplemental report, under certain conditions, Iowa Code § 68A.404(3)(a)(1); and

(4) a termination report, *id.* § 68A.402B(3); Form DR–3.

According to IRTL, these requirements burden its free speech and association rights, chilling it from making its desired expenditures, because they impose "PAC-style" burdens on non-PAC entities, contrary to *Citizens United* and *MCCL.*

In *MCCL,* groups sought preliminary injunction against several Minnesota campaign-finance laws, bringing facial and as-applied challenges. Under Minnesota's laws, an association collecting or expending dues or voluntary contributions "to influence the nomination or election of a candidate or to promote or defeat a ballot question" had to establish a "political fund" if it spent "more than $100 on such speech in a given year." *MCCL,* 692 F.3d at 868, 871 (citation and internal quotation marks omitted). Minnesota's disclosure law required a political fund to:

(1) "create and register its own independent expenditure political fund";

(2) "elect or appoint a treasurer and ensure the contents of the fund are not commingled with other funds";

(3) file "ongoing reports";

(4) "file a statement of inactivity";

(5) continue the reporting requirements until dissolution;

(6) "keep an account of contributions ... exceeding $20," "keep account of the date and amount of ... expenditures," and "maintain these records ... for four years from the date of filing";

and

(7) "settle ... debts, dispose of all assets in excess of $100 ... and file a termination report."

Id. at 868-71. Minnesota's law imposed "virtually identical regulatory burdens upon political funds as it d[id] [PACs]." *Id.* at 872. The MCCL court held that "the collective burdens associated with Minnesota's independent expenditure law chill political speech." *Id.* at 874. This court reversed the district court's denial of a preliminary injunction "to the extent [the statute] require[d] ongoing reporting requirements from associations not otherwise qualifying as PACs under Minnesota law," and expressed "no opinion as to whether any of the other obligations ... would ... survive exacting scrutiny." *Id.* at 878 (footnote omitted).

Iowa's disclosure law imposes fewer requirements, and its threshold amount for regulation ($750) is higher than Minnesota's amount ($100). Nonetheless, as explained in *MCCL,* the filing, ongoing reporting, and termination obligations are burdensome, and "discourage[ ] [groups], particularly small [ones] with limited resources, from engaging in protected political speech." *See id.* at 874. Such groups (and individuals) face the "particularly difficult choice" of complying with "cumbersome ongoing regulatory burdens or sacrific-[ing] protected core First Amendment activity." *Id.*

"Generally, '[l]aws that burden political speech are subject to strict scrutiny....'" *Id.* (citation omitted), *quoting Citizens United,* 558 U.S. at 340 (internal quotation marks omitted). But disclosure laws are subject to exacting scrutiny, because they "impose no ceiling ***590** on campaign-related activities and do not prevent anyone from speaking." *Citizens United,* 558 U.S. at 366 (internal citations and quotation marks omitted);

see id. at 319 ("The Government may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether."); *cf. MCCL,* 692 F.3d at 874-75 (questioning whether exacting scrutiny should always apply solely because of the "'disclosure' label," but applying exacting scrutiny to the disclosure laws at issue). Exacting scrutiny "requires a 'substantial relation' between the disclosure requirement and a 'sufficiently important' governmental interest." *MCCL,* 692 F.3d at 875, *quoting Citizens United,* 558 U.S. at 366-67 (internal quotation marks omitted); *cf. Citizens United,* 558 U.S. at 369 ("[D]isclosure is a *less* restrictive alternative to more comprehensive regulations of speech." (emphasis added) (citation omitted)). *But cf. United States v. Alvarez,* 132 S.Ct. 2537, 2551 (2012) (plurality opinion) ("[W]hen the Government seeks to regulate protected speech, the restriction must be the 'least restrictive means among available, effective alternatives,'" *quoting Ashcroft v. Am. Civil Liberties Union,* 542 U.S. 656, 666 (2004)). "To withstand this scrutiny, the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights." *Reed,* 130 S.Ct. at 2818 (citation and internal quotation marks omitted).

The circuit courts disagree whether exacting scrutiny requires narrow tailoring in the disclosure context. *Compare North Carolina Right to Life Comm. Fund for Indep. Political Expenditures v. Leake,* 524 F.3d 427, 439 (4th Cir. 2008) (holding narrow tailoring does not apply), *with Citizens for Responsible Gov't State PAC (CRG) v. Davidson,* 236 F.3d 1174, 1197 (10th Cir. 2000) (applying narrow tailoring). The *MCCL* court noted parenthetically that the Supreme Court has stated "a law will withstand exacting scrutiny 'only if

it is narrowly tailored to serve an overriding state interest.'" *MCCL,* 692 F.3d at 876, *quoting McIntyre v. Ohio Elections Comm'n,* 514 U.S. 334, 347 (1995).

The disagreement stems from the Supreme Court's discussion and application of "exacting scrutiny" in the campaign-finance context. In *Buckley,* the Court applied "exacting scrutiny" to *both* expenditure limitations and disclosure requirements. *See Buckley,* 424 U.S. at 44, 64. In *First National Bank of Boston v. Bellotti,* 435 U.S. 765 (1978), the Court applied "exacting scrutiny" to a statute's complete prohibition of political contributions or expenditures by "banks and business corporations." *Bellotti,* 435 U.S. at 767-68, 786. As late as *McIntyre* and *Austin v. Michigan Chamber of Commerce,* 494 U.S. 652 (1990), *overruled by Citizens United,* 558 U.S. 310, the Court still applied "exacting scrutiny" not only to laws regulating disclosure, but also to laws prohibiting or restricting political spending. *See McIntyre,* 514 U.S. at 347 (explaining that a law required narrow tailoring under "exacting scrutiny" because it burdened "core political speech" by requiring politically oriented leaflets to disclose who was responsible for the publications, *citing Bellotti,* 435 U.S. at 786); *Austin,* 494 U.S. at 702-03 (applying "exacting First Amendment scrutiny" to a law restricting political spending); *see also Day v. Holahan,* 34 F.3d 1356, 1361 (8th Cir. 1994) ("We are ***591** bound 'to apply the most exacting scrutiny to regulations that suppress, disadvantage, or impose differential burdens upon speech because of its content'," *quoting Turner Broad. Sys., Inc. v. F.C.C.,* 512 U.S. 622, 642 (1994)). The *McIntyre* Court equated "exacting scrutiny" with "strict scrutiny." *See McIntyre,* 514 U.S. at 346 & n. 10.

In *Citizens United,* the Court applied "strict scrutiny" to "[l]aws that burden political speech," requiring

"the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest." *Citizens United,* 558 U.S. at 340, (citation and internal quotation marks omitted). But it applied "exacting scrutiny"—requiring a "'substantial relation' between the disclosure requirement and a 'sufficiently important' governmental interest"—to "[d]isclaimer and disclosure requirements." *Id.* at 366-67, *quoting Buckley,* 424 U.S. at 64, 66, *and McConnell v. Fed. Election Comm'n,* 540 U.S. 93, 201, 231-32 (2003), *overruled by Citizens United,* 558 U.S. 310. The Court has since affirmed this distinction. *See Reed,* 130 S.Ct. at 2818. Disclosure requirements that "impose no ceiling on campaign-related activities and do not prevent anyone from speaking" are therefore subject to exacting scrutiny, not requiring a governmental interest that is narrowly tailored. *See Citizens United,* 558 U.S. at 366 (citation and internal citation omitted).

Iowa advances an "informational interest" to justify the disclosure requirements. "[T]he public has an interest in knowing who is speaking about a candidate shortly before an election." *Id.* at 369. By "provid[ing] the electorate with information about the sources of election-related spending," disclosure allows the public to "make informed choices in the political marketplace." *Id.* at 367 (citations and internal quotation marks omitted). This "informational interest alone" can be sufficiently important to justify disclosure requirements.[1] *Id.* at 369-71 (upholding a federal disclosure

[1] Iowa's disclosure law covers both express advocacy and issue advocacy. *See* Iowa Code § 68A.404(1). Disclosure requirements need not "be limited to speech that is the functional equivalent of express advocacy." *Citizens United,* 558 U.S. at 369; *see, e.g., Ctr. for Individual Freedom,* 697 F.3d

law based on an informational interest); *see, e.g., Ctr. for Individual Freedom,* 697 F.3d at 477-78 (upholding a state disclosure law based on an informational interest).

IRTL argues that, because the requirements impose "PAC-style" burdens on groups lacking *Buckley*'s major purpose, no interest can justify this imposition. Put differently, IRTL asserts that a state may impose PAC status or PAC-like burdens only on groups whose major purpose is express advocacy.

The Courts of Appeals that have addressed the issue are split on whether state campaign-finance disclosure laws can impose PAC status or burdens on groups lacking *Buckley*'s major purpose. *See MCCL,* 692 F.3d at 872 (noting the circuit split); *see, e.g., Ctr. for Individual Freedom,* 697 F.3d at 487 & n. 23 (same). This court has not directly addressed the issue. But in *MCCL,* Minnesota's disclosure law "extended the reach of PAC-like regulation" too far, because the law imposed PAC burdens on "*all* associations, *regardless* ***592** *of the association's purpose.*" *MCCL,* 692 F.3d at 872, 875 n. 10 (first emphasis in original) (second emphasis added); *see id.* at 874 ("[Choosing between] comply[ing] with cumbersome ongoing regulatory burdens or sacrific[ing] protected core First Amendment activity" "is a particularly difficult choice for smaller businesses and associations for whom political speech is not a major purpose nor a frequent activity."); *id.* at 877 ("Minnesota has not stated any plausible reason why *continued* reporting from nearly all associations, regardless of the association's major purpose, is neces-

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at 484 & n. 17 (upholding a state disclosure law covering issue advocacy and listing other circuits that have done so).

sary to accomplish [its stated] interests." (emphasis in original)). *But cf. Ctr. for Individual Freedom,* 697 F.3d at 486-91 (refusing to apply the major-purpose test to a state law, and noting that application could "'yield perverse results' "where a "'small group with [*Buckley's*] major purpose ... that spends [$3,000] for ads could be required to register' as a political committee, while a 'mega-group [lacking *Buckley's* major purpose] that spends $1,500,000 to defeat the same candidate ... would not have to register'" (second alteration in original), *quoting Nat'l Organization for Marriage (NOM) v. McKee,* 649 F.3d 34, 59 (1st Cir. 2011)). IRTL's major purpose is therefore an important consideration for determining whether Iowa may impose a particular requirement on it.

IRTL essentially argues that any disclosure requirement other than "one-time, event-driven reporting" is likely a PAC-style burden, invalid as applied to groups lacking *Buckley*'s major purpose. *See MCCL,* 692 F.3d at 875 n. 9 (noting that the federal disclosure laws reviewed in *Citizens United* involved "event-driven reporting ... [that] ended as soon as the report was filed" and required filing a "one-time disclosure only when a substantial amount of money was spent"). In other words, IRTL claims that a non-PAC can be required to disclose information about an independent expenditure only when it actually makes that expenditure.

The Supreme Court has noted a number of "onerous" federal requirements imposed on PACs. *See Citizens United,* 558 U.S. at 335-39. But it has not held that each of these burdens may be applied only to PACs. True, a single requirement or combination of requirements may be so burdensome that it cannot be applied to a group regardless of its purpose. But simply

because a requirement applies to a PAC does not mean applying it to a non-PAC is prohibited. The relevant inquiry is whether the disclosure requirement bears a substantial relation to a sufficiently important governmental interest.[2] *Cf. NOM,* 649 F.3d at 56 ("It is not the designation as a PAC but rather the obligations that attend PAC designation that matter for purposes of First Amendment review.").

1.

An independent expenditure committee must file an "independent expenditure statement" and an "initial report" within 48 hours of making an independent expenditure over $750, or within 48 hours "of disseminating the communication to its intended audience, whichever is earlier." Iowa Code §§ 68A.404(3), 68A.404(4)(a); Iowa Admin. Code rs. 351–4.9(15), 351–4.27(4). IRTL argues that two of the independent expenditure statement's requirements—(a) "registration" and (b) 48-hour ***593** initial reporting—are PAC-like burdens that unconstitutionally infringe its ability to speak.

A person who makes an independent expenditure uses Form Ind–Exp–O—a one-page document—to electronically file both the independent expenditure statement and the initial report. *See* Iowa Admin. Code rs. 351–4.9(15), 351–4.27(2). The "registration" portion of the form requires the name and contact information of

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[2] Because IRTL does not raise—and this court does not address—a facial or overbreadth challenge to these disclosure requirements, this court need not consider the constitutionality of Iowa's disclosure laws, *see* Iowa Code §§ 68A.404(3), 68A.404(4)(a), administrative rules, *see* Iowa Admin. Code rs. 351–4.1(1)(*d*), 351–4.9(15), 351–4.27(4), or forms, as applied to individuals. *See Brockett,* 472 U.S. at 502.

the organization and an individual within the organization. The rest of the form requires contact information for the funding source of the independent expenditure (and for any beneficiary of the expenditure), and information about the expenditure itself, including the date and amount, how the message is communicated, and the position advocated.

a.

According to IRTL, the independent expenditure statement requires it to "register," treating it like a "campaign-related" group, or PAC. Neither the Supreme Court nor this court expressly limits a registration requirement to PACs. *See Citizens United,* 558 U.S. at 369 (upholding a registration requirement for lobbyists based on an informational interest); *cf. id.* at 337-38 (including "fil[ing] an organization statement and report[ing] changes to this information within 10 days" in a list of requirements that make a PAC "burdensome"); *MCCL,* 692 F.3d at 871 ("The collective burdens accompanying the creation and maintenance of a political fund—appointing a treasurer who becomes subject to civil and criminal penalties, segregating funds, maintaining detailed records, and registering and filing ongoing reports with the Board—are substantial." (internal citation omitted)). Even for "one-time, event-driven" reporting—which IRTL trumpets as a valid form of disclosure as applied to non-PACs—basic contact information about the entity making the expenditure is necessary to further "the public ... interest in knowing who is speaking about a candidate." *See Citizens United,* 558 U.S. at 369; *see also* 2 U.S.C. § 434(c) (requiring a non-PAC making independent expenditures over $250 to disclose its name and address). Nonetheless, IRTL asserts that the *MCCL* court held a registration requirement too burdensome for non-

PACs. This court did not do so. Rather, it "reverse[d] the district court's denial of ... a preliminary injunction to the extent [Minnesota's law] require[d] ongoing reporting requirements," but "express[ed] no opinion as to whether any of the other obligations ..., by themselves or collectively, survive exacting scrutiny." *MCCL,* 692 F.3d at 877.

Here, the contact information in the registration is like that required for a one-time, event-driven report. Requiring the name and address of the person making the independent expenditure provides "transparency [that] enables the electorate to make informed decisions and give proper weight to different speakers and messages." *Citizens United,* 558 U.S. at 371. Unlike "cumbersome ongoing regulatory burdens," which impose the "particularly difficult choice" either to "comply ... or sacrifice protected core First Amendment activity," *MCCL,* 692 F.3d at 874, the basic information Form Ind–Exp–O requires is not overly burdensome. Only when a person makes an independent expenditure is the requirement triggered. *See* Iowa Code § 68A.404(3).

IRTL claims that *any* registration requirement for non-PACs is unconstitutional. But a "registration" label is not what matters. This court need not consider whether *all* forms of a registration requirement would be constitutional as applied ***594** to non-PACs. Here, the limited contact information Form Ind–Exp–O requires—whether labeled as "registration" or "one-time, event-driven" reporting—bears a substantial relation to a sufficiently important informational interest. Thus, the first two sentences of Iowa Code subsection 68A.404(3)[3] and the "registration" portion of Form

[3] "A person, other than a committee registered under

Ind–Exp–O are constitutional as applied to IRTL and other groups whose major purpose is not nominating or electing candidates.

b.

IRTL contends that requiring an "initial report," *see id.* § 68A.404(3)(a), and requiring it to file the report within 48 hours, *see id.* § 68A.404(3), 68A.404(4)(a), is unconstitutional. According to IRTL, the initial report must include all information listed in Iowa Code section 68A.402A. Iowa Code subsection 68A.404(3)(a) states that "the person filing the independent expenditure statement shall file reports under sections 68A.402 and 68A.402A." *Id.* § 68A.404(3)(a). The next sentence reads, "An initial report shall be filed at the same time as the independent expenditure statement." *Id.* Iowa claims, "Even though the Code requires a 'statement' and a 'report,' the Board 'has combined both requirements into one filing,'" citing Iowa Administrative Code rule 351–4.27(2). That rule states, "Form Ind–Exp–O shall be filed by a person" and "shall be in a format that will enable a person ... making an independent expenditure to comply with all of the reporting requirements in 2009 Iowa Code Supplement section 68A.404...." Iowa Admin. Code r. 351–4.27(2). Iowa requires the initial report to contain only the information in Form Ind–Exp–O, not the more extensive information Iowa Code section 68A.402A requires.

Like registration, the information in the "initial report" on Form Ind–Exp–O is not overly burdensome.

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this chapter, that makes one or more independent expenditures shall file an independent expenditure statement. All statements and reports required by this section shall be filed in an electronic format as prescribed by rule." Iowa Code § 68A.404(3).

This information—the name and address of the funding source for, and beneficiary of, the independent expenditure, and brief details of the expenditure itself—is similar to a one-time, event-driven report. *See CRG,* 236 F.3d at 1197 (finding "no constitutional problems with the content requirements of Colorado's public reporting scheme," which includes "(1) the amount of the expenditure, (2) a 'detailed description' of the use of the expenditure, and (3) the name of the candidate whom the expenditure is intended to support or oppose"); *see also* 2 U.S.C. § 434(c) (listing the federal reporting requirements when a "person (other than a political committee)" makes an independent expenditure over $250). A non-PAC files Form Ind–Exp–O after "making an independent expenditure exceeding $750." Iowa Admin. Code r. 351–4.27(4). "[R]equiring reporting whenever money is spent" is a constitutional way to "accomplish ... disclosure-related interests."[4] *MCCL,* 692 F.3d at 876-77.

IRTL asserts that the "burden of a 48-hour-reporting requirement is so great ***595** that the government's interest cannot justify it." It cites *CRG,* where the Tenth Circuit held a 24-hour notice requirement "a far cry from being narrowly tailored," because "[n]one of

[4] That Iowa refers to the filing requirement as an "initial" report does not affect the analysis. Because the current filing requirement under the administrative rules allows an independent expenditure committee to file both the "independent expenditure statement" and the "initial report" on the same Form Ind–Exp–O, *see* Iowa Admin. Code rs. 351–4.9(15), 351–4.27(2), the initial reporting requirement is constitutional. This court does not hold that *any* form of initial reporting requirement is constitutional as applied to IRTL and other non-PACs.

the State's compelling interests ... would be at all compromised by a more workable deadline." *CRG,* 236 F.3d at 1197. IRTL also relies on a district court case, where the court found no "justification for [a] regulation's ... requirement that expenditures in excess of $250 per candidate must be reported within twenty-four hours *whenever they are made*." *See NOM v. McKee,* 723 F.Supp.2d 245, 266 (D.Me. 2010) (emphasis in original) (footnote omitted), *aff'd in part, rev'd in part on other grounds,* 649 F.3d 34. IRTL argues that instead the law could, constitutionally, require filing the report at the next deadline for the election to which the organization directed the expenditure.

In *Citizens United,* the Court—applying exacting scrutiny—upheld a federal law requiring disclosure "within 24 hours" when a person spends over $10,000 on "electioneering communications,"[5] *see* 2 U.S.C. § 434 (f)(1). *Citizens United,* 558 U.S. at 366-71. "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." *Id.* at 370. Although the Court did not directly address the 24-hour requirement, it did explain that the disclosure law containing the deadline "permits citizens and shareholders to react to the speech of corporate entities in a proper way." *Id.* at 371. "This transparency enables the electorate to make informed

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[5] "The term 'electioneering communication' means any broadcast, cable, or satellite communication which ... refers to a clearly identified candidate for federal office," fulfills certain timing requirements, and, if for "a candidate for an office other than President or Vice President, is targeted to the relevant electorate." 2 U.S.C. § 434(f)(3).

decisions and give proper weight to different speakers and messages." *Id.*

Here, the 48-hour reporting requirement serves a substantial informational interest. True, requiring a report "shortly before an election," rather than shortly after making an expenditure, would fulfill the public's interest in "knowing who is speaking about a candidate." *See id.* at 369. But narrow tailoring is not required, and the 48-hour deadline makes disclosure "more effective" because it is "rapid and informative," more quickly "'provid[ing] the electorate with information' about the sources of election-related spending." *See id.* at 367-70 (alteration in original), *quoting Buckley,* 424 U.S. at 66. With modern technology, the burden of completing the short, electronic form within two days of making a $750 expenditure is not onerous. *See SpeechNow.org v. Fed. Election Comm'n,* 599 F.3d 686, 697 (D.C. Cir. 2010) (upholding a federal requirement that "those ... not organized as political committees" report "within 24 hours expenditures of $1000 or more made in the twenty days before an election, and report[ ] within 48 hours any expenditures ... of $10,000 or more made at any other time"); *Leake,* 524 F.3d at 433, 439 (upholding a state law that required entities making independent expenditures over $5,000 to file a report "within twenty-four hours"); *see also McConnell,* 540 U.S. at 195-96 (upholding a similar federal disclosure requirement); *cf. MCCL,* 692 F.3d at 868 (holding as overly burdensome ongoing "organizational, record-keeping, and reporting requirements"). Requiring "prompt disclosure" within 48 hours bears a substantial relation ***596** to Iowa's sufficiently important interest in keeping the public informed. The second sen-

tence of Iowa Code subsection 68A.404(3)(a),[6] the entirety of Iowa Code subsection 68A.404(4)(a), the first and third sentences of Iowa Administrative Code rule 351–4.9(15),[7] and the initial reporting portion of Form Ind–Exp–O are constitutional as applied to IRTL and other groups whose major purpose is not nominating or electing candidates.

2.

After filing the initial report, an independent expenditure committee must file "[s]ubsequent reports ... according to the same schedule as the office or election to which the independent expenditure was directed," up to four times during an election year. Iowa Code § 68A.404(3)(a). "The committee shall ... continue to file reports ... until the committee files a notice of dissolution...." Iowa Admin. Code r. 351–4.9(15). IRTL contends these requirements are similar to the ongoing reporting requirements preliminarily enjoined in *MCCL*. *See MCCL,* 692 F.3d at 877. This court agrees.

In *MCCL,* Minnesota's statute required "political funds to file five reports during a general election year, even if the political fund ha[d] been inactive during

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[6] "An initial report shall be filed at the same time as the independent expenditure statement." Iowa Code § 68A.404 (3)(a).

[7] "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." Iowa Admin. Code r. 351–4.9(15) (first sentence). "Form Ind–Exp–O shall serve as a campaign disclosure report for an independent expenditure committee." *Id.* (third sentence).

that period." *Id.* at 873 (citation omitted). Independent expenditures of $100 triggered the reporting requirements, which "apparently end[ed] only if the association dissolve[d] the political fund." *Id.* (citations omitted). An association thus maintained the right to speak only by filing the ongoing reports. *Id.*

This court explained that complying with "cumbersome ongoing regulatory burdens" could be "particularly difficult ... for smaller businesses and associations for whom political speech is not a major purpose." *Id.* at 874. The ongoing reporting—"untethered from continued speech"—did "not match any sufficiently important disclosure interest." *Id.* at 876-77 ("Minnesota has not stated any plausible reason why *continued* reporting from nearly all associations, regardless of the association's major purpose, is necessary to accomplish these interests." (emphasis in original) (citation omitted)). "Minnesota [could have] accomplish[ed] any disclosure-related interests ... through less problematic measures, such as [one-time, event-driven reporting]." *Id.* at 876 (alteration and internal citation omitted). The ongoing reporting requirements were "likely unconstitutional." *Id.* at 877.

Under Iowa's law, the subsequent reports require disclosing: (1) the "amount of cash on hand at the beginning of the reporting period"; (2) the "name and mailing address of each person who has made ... contributions of money" or "in-kind contributions to the committee" above $25, in many instances; (3) the "total amount of contributions made to the committee during the reporting period"; (4) loans made; (5) the "name and mailing address of each person to whom disbursements or loan repayments have been made" using contributions received, and the "amount, purpose, and date of each disbursement"; (6) ***597** disbursements

made to or by a consultant, "disclosing the name and address of the recipient, amount, purpose, and date"; (7) the "amount and nature of debts and obligations owed" in excess of specified amounts; and (8) "[o]ther pertinent information required by th[e] chapter." Iowa Code § 68A.402A(1). As in *MCCL,* these ongoing reporting requirements are "potentially perpetual regardless of whether the [person] ever again makes an independent expenditure." *MCCL,* 692 F.3d at 871-73 ("[A person] must continue to comply with these burdensome regulations even after [he or she] stops speaking."). By conditioning the right to speak on "cumbersome ongoing regulatory burdens," regardless of its major purpose, Iowa's disclosure law "discourages [non-PACs], particularly small [ones] with limited resources, from engaging in protected political speech." *Id.* at 873-74.

Iowa counters that in *Leake,* the Fourth Circuit upheld a requirement that non-PACs file "eight reports ... during the two-and-a-half month period preceding the election." *Leake,* 524 F.3d at 439-40. But the reporting requirement there was not ongoing. In *Alaska Right To Life Comm. v. Miles,* 441 F.3d 773 (9th Cir. 2006), also cited by Iowa, the Ninth Circuit upheld an ongoing reporting requirement under various state interests, including an informational interest. *See Miles,* 441 F.3d at 790-92. *Miles* conflicts with this court's holding in *MCCL* (and predates *Citizens United*). *See MCCL,* 692 F.3d at 876-77 ("Minnesota has not advanced any relevant correlation between its identified interests and ongoing reporting requirements.").

Iowa attempts to distinguish the ongoing reporting requirements in *MCCL* by arguing that Minnesota's law imposed "virtually identical regulatory burdens" on PACs and non-PACs. *See id.* at 872. Though this court

found the "equality of burdens ... meaningful," this factor was not necessary to deem the requirements unconstitutional. *See id.* at 872-74, 876-77. Regardless, Iowa's law does require PACs and non-PACs to file "virtually identical" ongoing reports, because "[e]ach report filed under section 68A.402" must comply with Iowa Code section 68A.402A. *See* Iowa Code §§ 68A.402A; *id.* § 68A.402 ("Each committee shall file with the board reports disclosing information required under this section ...."); *id.* § 68A.404(3)(a) ("[T]he person filing the independent expenditure statement shall file reports under sections 68A.402 and 68A.402A.").

Requiring a group to file perpetual, ongoing reports "regardless of [its] purpose," and regardless of whether it ever makes more than a single independent expenditure, is "no more than tenuously related to" Iowa's informational interest. *See MCCL,* 692 F.3d at 876-77 (citations and internal quotation marks omitted). Though narrow tailoring is not required, having independent expenditure committees file a one-time report "whenever money is spent"—similar to the "initial report"—would be "less problematic," and allow Iowa to achieve its interest in helping the public make informed choices in the political marketplace. *See id.* (citation and internal quotation marks omitted). IRTL does not explain how ongoing reporting impinges its associational rights. But it does show how it hinders its free speech rights. Iowa fails to advance a sufficiently important governmental interest that bears a substantial relation to the ongoing reporting requirements as applied to IRTL and other non-PAC groups. Thus, the first and third sentences of Iowa Code subsection 68A.404(3)(a)[8]

[8] "Subject to paragraph 'b', the person filing the independent expenditure statement shall file reports under sec-

and the ***598** second sentence of Iowa Administrative Code rule 351–4.9(15)[9] are unconstitutional as applied to IRTL and other groups whose major purpose is not nominating or electing candidates.

3.

An independent expenditure committee must file a "supplemental report" if, after October 19, but before the election in an election year, it "either [(1)] raises or [(2)] expends more than [$1,000]." *See* Iowa Code §§ 68A.402(2)(a)-(b), 68A.404(3)(a)(1). *MCCL* again provides the controlling analysis.

Under the first supplemental reporting requirement, after a group makes a single independent expenditure, it must continually disclose funds it raises over $1,000—regardless of the group's purpose, and regardless of whether it ever uses those funds to make an independent expenditure. *See MCCL,* 692 F.3d at 873. Non-PACs must already report expenditures over $750, and the sources of those funds, in the independent expenditure statement—tied to an *actual* expenditure—making both supplemental reporting requirements re-

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tions 68A.402 and 68A.402A." Iowa Code § 68A.404(3)(a) (first sentence). (Subsection b explains to whom the section does not apply. *See id.* § 68A.404(3)(b).) "Subsequent reports shall be filed according to the same schedule as the office or election to which the independent expenditure was directed." *Id.* § 68A.404(3)(a) (third sentence).

[9] "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." Iowa Admin. Code r. 351–4.9(15).

dundant. *See* Iowa Code § 68A.404(3). Because the obligations "continue until the [independent expenditure committee] is dissolved," to "escape these ongoing burdens, the [group] must file a termination statement." *MCCL,* 692 F.3d at 869, 873. Iowa's supplemental reporting requirements thus extend the ongoing reporting requirements—"untethered from continued speech" —that "hinder [] [groups] from participating in the political debate and limit[] their access to the citizenry and the government." *See id.* at 874, 876.

More troubling, each supplemental report appears to require compliance with the onerous filing requirements in section 68A.402A. *See id.* § 68A.404(3)(a) (stating that reports "shall [be] file[d] ... under sections 68A.402 and 68A.402A"). "[U]nless an ordinance is readily susceptible" to "a limiting construction that removes the threat to constitutionally protected speech," this court "cannot ... suppl[y] ... such an interpretation, because federal courts lack jurisdiction authoritatively to construe state legislation." *Ways v. City of Lincoln, Neb.,* 274 F.3d 514, 519 (8th Cir. 2001) (citation and internal citation and quotation marks omitted); *see Planned Parenthood of Mid-Missouri & E. Kansas, Inc. v. Dempsey,* 167 F.3d 458, 461 (8th Cir. 1999) ("We interpret statutes to avoid serious constitutional problems, so long as the statutory language is fairly susceptible to a constitutional construction."). Neither Iowa's disclosure laws, nor its administrative rules, indicate that a supplemental report requires anything less than full compliance with the same filing obligations demanded of other "subsequent" reports. *See* Iowa Code § 68A.404(3)(a). Iowa does not explain how requiring additional, redundant, and more burdensome reports fulfills a sufficiently important informational interest not already advanced by the independent ***599** expen-

diture statement. The perpetual supplemental reporting requirements discourage groups from participating in the "open marketplace of ideas protected by the First Amendment." *See Citizens United,* 558 U.S. at 354 (citation and internal quotation marks omitted); *see also MCCL,* 692 F.3d at 873 ("[A]n association is compelled to decide whether exercising its constitutional right is worth the time and expense of entering a long-term morass of regulatory red tape."). Failing exacting scrutiny, Iowa Code subsection 68A.404(3)(a)(1)[10] is unconstitutional as applied to IRTL and other groups whose major purpose is not nominating or electing candidates.

4.

When an independent expenditure committee "determines [it] will no longer make an independent expenditure, [it] shall notify the board within thirty days following such determination by filing a termination report," using Form DR–3. Iowa Code § 68A.402B(3); *see* Form DR–3. Form DR–3 requires a person's name, contact information, and dated signature. IRTL argues that the termination requirement violates its First Amendment rights because, like in *MCCL,* a group's "constitutional right to speak through independent expenditures dissolves" when it files the termination report. *See MCCL,* 692 F.3d at 873.

As an initial matter, the parties dispute whether an independent expenditure committee must "dissolve" before filing the termination report. In *MCCL,* before

[10] "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." Iowa Code § 68A.404(3)(a)(1).

termination, associations had to dissolve by settling all debts, "dispos [ing] of all assets in excess of $100," and filing a termination report "disclosing the same information as required in periodic reports." *Id.* at 869. Here, Form DR–3 is entitled a "Statement of Dissolution," and lists a number of dissolution requirements for "committees." The relevant code provision defines "committee" to "include[] a political committee and a candidate's committee," but does not mention an independent expenditure committee. *See* Iowa Code § 68A. 102(8). That term appears only in the administrative rules, which also exclude it from the definition of "committee." *See* Iowa Admin. Code r. 351–4.1(1)(*a*), (*d*). Under section 68A.402B, only a "committee" must file a "dissolution report" or "statement of dissolution." *See* Iowa Code § 68A.402B(1)-(2). The administrative rule defining "independent expenditure committee" refers to filing a "notice of dissolution," but cites subsection 68A.402B(3), which states that an "independent expenditure committee" need only file a "termination report." *Id.* § 68A.402B(3); Iowa Admin. Code r. 351–4.9(15). (Form DR–3 appears designed primarily for PACs and "candidate's committees," though it doubles confusingly as a "termination report." *See* Form DR–3 (indicating who should sign the form for a candidate's committee and for a PAC, but not stating who should sign for an independent expenditure committee).) Unlike in *MCCL,* the only termination requirement for an independent expenditure committee is filing the termination report.

The burden of completing the short, electronic termination report is negligible. The heavier burden is, as IRTL states in its brief, "choos[ing] between ongoing reporting and giving up the constitutional speech right." The termination requirement is thus part and

parcel of the ongoing reporting requirements. "To speak ***600** again, the [group] must initiate the bureaucratic process again." *MCCL,* 692 F.3d at 873.

In *MCCL,* regaining the right to speak entailed a host of cumbersome obligations. *See id.* at 868-69. Here, a group need complete only the independent expenditure statement and the initial report by filing Form Ind–Exp–O. Nonetheless, the termination requirement interferes with the "constitutionally protected marketplace of ideas," because it forces a group to decide whether it will give up its right to speak. *See id.* at 873-74. To speak again, it must decide whether renewing the ongoing reporting cycle is worth the effort. *See id., citing MCFL,* 479 U.S. at 255 (plurality opinion) ("Faced with the need to assume a more sophisticated organizational form, to adopt specific accounting procedures, to file periodic detailed reports ... it would not be surprising if at least some groups decided that the contemplated political activity was simply not worth it.").

Iowa advances an informational to support the termination requirement. This interest is tenuous at best. The termination report provides no disclosure to the public about actual contributions or expenditures.

Iowa also advances a "corporate governance" interest. But it offers no explanation how filing a termination report substantially relates to "ensuring that corporate entities ... operate in a manner that honors the privileges given to the corporate form." It cites *Reed* for the proposition that States retain "significant flexibility in implementing their own voting systems." *See Reed,* 130 S.Ct. at 2818 ("To the extent a regulation concerns the legal effect of a particular activity in that process, the government will be afforded substantial latitude to enforce that regulation."). In *Reed,* the Su-

preme Court held the state's interest in "preserving the integrity of the electoral process by combating fraud, detecting invalid signatures, and fostering government transparency and accountability" justified requiring disclosure of a referendum petitioner's identity. *Id.* at 2815, 2819. Voting systems and campaign finance both generally involve the "electoral process." *See id.* at 2819. But *Reed* is otherwise inapposite: it does not address a corporate-governance interest, and Iowa does not claim that its corporate-governance interest will preserve the integrity of the electoral process.

A corporate-governance interest in protecting "corporate shareholders" is "traditionally within the province of state law." *See Bellotti,* 435 U.S. at 792. However, in *Bellotti,* considering a state statute restricting campaign contributions and expenditures, the Supreme Court explained that "shareholders normally are presumed competent to protect their own interests" through "the procedures of corporate democracy." *Id.* at 794-95. The Court concluded, "Assuming, *arguendo,* that protection of shareholders is a 'compelling' interest under the circumstances of this case, we find 'no substantially relevant correlation between the governmental interest asserted and the State's effort' to prohibit appellants from speaking." *Id.* at 795, *quoting Shelton v. Tucker,* 364 U.S. 479, 485 (1960). Even assuming Iowa has a sufficiently important governmental interest in protecting corporate shareholders in the disclosure context, *but cf. Citizens United,* 558 U.S. at 364 ("The First Amendment does not permit Congress to make ... categorical distinctions based on the corporate identity of the speaker ...."), any interest in protecting this group is irrelevant as applied to IRTL, because it has no shareholders. ***601**

Iowa fails to advance a sufficiently important gov-

ernmental interest substantially related to the termination requirement. Iowa Code subsection 68A.402B(3) and Form DR–3 are unconstitutional as applied to IRTL and groups whose major purpose is not nominating or electing candidates.

C.

In Count 3, IRTL challenges Iowa's ban on direct corporate contributions to a candidate, a candidate's committee, or a political committee, as unconstitutional under the First and Fourteenth Amendments, facially and as applied. *See* Iowa Code § 68A.503. The ban also includes insurance companies, savings associations, banks, and credit unions. *Id.* § 68A.503(1). The district court upheld the ban.

1.

Under the First Amendment, review of "restrictions on political contributions ... [is] relatively complaisant ..., because contributions lie closer to the edges than to the core of political expression." *MCCL,* 692 F.3d at 878, *quoting Fed. Election Comm'n v. Beaumont,* 539 U.S. 146, 161 (2003) (internal quotation marks omitted). "Put simply, 'restrictions on contributions require less compelling justification than restrictions on independent spending.'" *Id., quoting Beaumont,* 539 U.S. at 158-59. A contribution limit need satisfy only "the lesser demand of being closely drawn to match a sufficiently important interest." *Id., quoting Beaumont,* 539 U.S. at 162 (internal quotation marks omitted).

Iowa advances an interest in preventing quid pro quo corruption. *See SpeechNow.org,* 599 F.3d at 695, *quoting Citizens United,* 558 U.S. at 359. IRTL counters that an "anti-corruption" interest justifies only a "limit," not an outright ban, on contributions. *See, e.g.,*

Buckley, 424 U.S. at 26. In *Beaumont,* however, the Court "upheld a federal law banning direct corporate campaign contributions." *MCCL,* 692 F.3d at 879, *citing Beaumont,* 539 U.S. at 149, 162-63.

IRTL attacks *Beaumont* as being on "shaky ground" after *Citizens United. See Citizens United,* 558 U.S. at 359 (neither endorsing nor condemning the distinction between independent expenditures and contributions, because the Court was not asked to "reconsider whether contribution limits should be subjected to rigorous First Amendment scrutiny"); *MCCL,* 692 F.3d at 879 n. 12 ("*Citizens United*'s outright rejection of the government's anti-distortion rationale, as well as the Court's admonition that the state cannot exact as the price of state-conferred corporate advantages the forfeiture of First Amendment rights, casts doubt on *Beaumont,* leaving its precedential value on shaky ground." (alteration, citations, and internal citations and quotation marks omitted)). Nonetheless, "[i]n light of *Beaumont,*" the *MCCL* court upheld a contribution ban under the First Amendment. *MCCL,* 692 F.3d at 879.

Beaumont and MCCL dictate the outcome here. This court "leav[es] to th[e] [Supreme] Court the prerogative of overruling its own decisions." *Id., quoting Agostini v. Felton,* 521 U.S. 203, 237 (1997) (internal quotation marks omitted). Iowa's contribution ban is constitutional both facially and as applied to IRTL.

2.

IRTL claims the corporate-contribution ban violates its right to equal protection under the Fourteenth Amendment, arguing the ban (a) is content based, and (b) ***602** differentiates between similarly situated speakers—corporations and labor unions. "[S]tatutory

classifications impinging upon [the fundamental right to engage in political expression] must be narrowly tailored to serve a compelling governmental interest." *Id.* at 879-80 (second alteration in original), *quoting Austin,* 494 U.S. at 666 (internal quotation marks omitted).

a.

The district court found the contribution ban content neutral. This court agrees. "The principal inquiry in determining content neutrality is whether the government has adopted a regulation of speech because of disagreement with the message the speech conveys." *Fraternal Order of Police, N.D. State Lodge v. Stenehjem,* 431 F.3d 591, 596 (8th Cir. 2005), *citing Ward v. Rock Against Racism,* 491 U.S. 781, 791 (1989). "A regulation that serves purposes unrelated to the content of expression is deemed neutral...." *Id., quoting Ward,* 491 U.S. at 781 (internal quotation marks omitted); *see Turner Broad. Sys., Inc. v. F.C.C.,* 512 U.S. 622, 643 (1994) ("[L]aws that confer benefits or impose burdens on speech without reference to the ideas or views expressed are in most instances content neutral." (citations omitted)).

Missouri ex rel. Nixon v. American Blast Fax, Inc., 323 F.3d 649 (8th Cir. 2003), is instructive. There, this court ruled that a law banning unsolicited fax advertisements was content neutral. *Nixon,* 323 F.3d at 659-60. The ban was "neither intended to protect the public from the content of the speech nor to implement policy unrelated to the delivery of the message itself." *Id.* "Congress was not concerned with the effect of the content of the advertisements, but rather with the effect of the act of communicating." *Id.* (distinguishing *Thompson v. Western States Medical Center,* 535 U.S.

357, 373 (2002), because the "legislation there banned dissemination of truthful commercial information ... to 'prevent members of the public from making bad decisions with the information'"). "[T]he harm posited ... [wa]s as much a function of simple receipt of targeted solicitations ... as it [wa]s a function of the letters' contents." *Id.* at 660, *quoting Fla. Bar v. Went For It, Inc.,* 515 U.S. 618, 631 (1995) (internal quotation marks omitted). Also, the law did not impose a complete ban, but left open other means for advertisers to communicate their messages. *Id.*

Here, the contribution ban serves the purpose of preventing quid pro quo corruption or the appearance of such corruption. *See Beaumont,* 539 U.S. at 155-56. A contribution essentially conveys the message, "I support candidate X." Like the law in *Nixon,* the ban addresses Iowa's concern not with the message content, but rather with the corrupting effect that the act of communicating through contributions may have on recipients of those contributions. *Cf. Bartnicki v. Vopper,* 532 U.S. 514, 526 (2001) ("[T]he communications at issue are singled out ... by virtue of the source, rather than the subject matter."). The ban is also not complete—entities may contribute through PACs. *See* Iowa Code § 68A.503. Moreover, in the First Amendment context, the *Beaumont* Court applied "closely drawn," rather than strict, scrutiny to the contribution ban. *See Beaumont,* 539 U.S. at 162. Had the law been content based, strict scrutiny would have applied. *See Turner,* 512 U.S. at 635-36 ***603** (explaining strict scrutiny applies to content-based regulation). The contribution ban is content neutral.

b.

IRTL argues the contribution ban violates its right

to equal protection because Iowa imposes the ban on corporations (and other groups) but not labor unions. *Cf. Dallman v. Ritter,* 225 P.3d 610, 634-35 (Colo.2010) (holding a state law allowing corporations to contribute to candidates but forbidding labor unions from doing so violated the Fourteenth Amendment Equal Protection Clause). The Supreme Court did reject "the so-called anti-distortion rationale relied upon in *Austin* " to uphold a contribution ban against a Fourteenth Amendment challenge. *See MCCL,* 692 F.3d at 880, *citing Citizens United,* 558 U.S. at 347-57. But the Court "did not explicitly overrule [*Austin's*] equal protection analysis." *Id.* at 879. "[I]f precedent of th[e] [Supreme] 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...." *Id., quoting Agostini,* 521 U.S. at 237 (internal quotation marks omitted). The contribution ban does not violate the Fourteenth Amendment.[11]

D.

In Count 4, IRTL challenges Iowa's requirements that an entity's board of directors authorize independent expenditures, and that an officer of the corporation certify such authorization, as unconstitutional under the First and Fourteenth Amendments, facially and as applied. The district court found IRTL lacked standing to bring its First Amendment challenge and part of its Fourteenth Amendment challenge, and upheld the re-

[11] To be clear, this court is not deciding whether corporations and labor unions are similarly situated, or whether Iowa's interest in preventing quid pro quo corruption justifies the contribution ban. It simply follows the still-controlling precedent of the Supreme Court. *See Austin,* 494 U.S. at 666-68.

quirements under the Equal Protection Clause.

> The board-authorization provisions provide:
>
> 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, executive council, or similar organizational leadership body 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.

Iowa Code § 68A.404(2)(a)-(b).

The certification provision states that an independent expenditure statement must contain:

> A certification by an officer of the corporation that the board of directors, executive council, or similar organizational leadership body expressly authorized ***604** the independent expenditure or use of treasury funds for the independent expenditure by resolution or other affirmative action within the calendar year

> when the independent expenditure was incurred.

Id. § 68A.404(5)(g). Form Ind–Exp–O has a "Statement of Certification" that provides, in relevant part, "If the organization making the expenditure is a corporation, I affirm that the board of directors, executive council, or similar organizational leadership body expressly authorized funds for the independent expenditure by resolution or other affirmative action within the calendar year when the independent expenditure was incurred."

1.

The district court found IRTL alleged no more than being "subjective [ly] chill[ed]" from exercising its First Amendment rights. *See Eckles v. City of Corydon,* 341 F.3d 762, 767 (8th Cir. 2003) (holding that to convey standing, there "must be a claim of specific present objective harm or a threat of specific future harm" (citation and internal quotation marks omitted)). "Where a plaintiff alleges an intention to engage in a course of conduct that is clearly proscribed by statute," however, "courts have found standing to challenge the statute, even absent a specific threat of enforcement." *Gray v. City of Valley Park, Mo.,* 567 F.3d 976, 986 (8th Cir. 2009), *citing Russell v. Burris,* 146 F.3d 563, 566-67 (8th Cir. 1998) (holding the plaintiffs lacked standing to challenge a campaign-finance law, because they "indicated neither that they would contribute to a specific independent expenditure committee nor that, but for the limitations of [the law], they would form an independent expenditure committee"). Merely alleging a desire to engage in the proscribed activity is sufficient to confer standing. *See, e.g., Arkansas Right to Life State Political Action Comm. v. Butler,* 146 F.3d 558,

560 (8th Cir. 1998) (holding the plaintiffs had standing because they "allege[d] in their verified complaint that they 'would like to make contributions'" in violation of the statute); *see also Minnesota Citizens Concerned for Life v. Fed. Election Comm'n,* 113 F.3d 129, 131 (8th Cir. 1997) ("When government action or inaction is challenged by a party who is a target or object of that action, ... there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it." (citation and internal quotation marks omitted)).

IRTL alleges in its complaint that it "wishes to decide when and how to make its independent expenditures in the manner it deems appropriate," and "objects to Iowa's statute that prevents a corporation form making independent expenditures unless its board of directors specifically approves them." By alleging "a specific intent to pursue conduct in violation of the challenged statute," IRTL has demonstrated standing to pursue its First Amendment challenge. *See Arkansas Right to Life,* 146 F.3d at 560.

IRTL urges this court to decide the merits. Because the district court did not do so, this court remands for that court to consider IRTL's First Amendment claim in the first instance. *See King Cole Foods, Inc. v. Super-Valu, Inc.,* 707 F.3d 917, 925 (8th Cir. 2013).

2.

IRTL claims the board-authorization and certification requirements violate its right to equal protection under the Fourteenth Amendment for the same reasons it argued the contribution ban was unconstitutional—the requirements (a) are content ***605** based and (b) differentiate between similarly situated speak-

ers.

a.

The district court denied IRTL standing to raise its Fourteenth Amendment challenge "to the extent that [its] Fourteenth Amendment claim duplicates its First Amendment claim." Thus, the court did not consider IRTL's argument that the requirements are content-based restrictions that violate its right to equal protection. Because IRTL has standing to raise its First Amendment claim, this court remands to the district court to consider this Fourteenth Amendment argument in the first instance.

b.

According to IRTL, the board-authorization requirement "singles out" corporations for disparate treatment, in violation of the Equal Protection Clause. But the requirement applies to all "entit[ies], other than an individual or individuals." *See* Iowa Code § 68A.404(2)(a). IRTL points out that the law does not define "entity." It asserts that had the provision meant to include groups other than corporations, the legislature would have used the term "person," as it does in other sections. *See, e.g., id.* §§ 68A.404(3), (6), (7). IRTL also contends that the "statutory scheme" shows the provision targets corporations.

The plain statutory language defeats IRTL's assertion. *See O'Neal v. State Farm Fire & Cas. Co.,* 630 F.3d 1075, 1077 (8th Cir. 2011). It concedes that the ordinary meaning of "entity" "include[s] 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"). Contrary to IRTL's contention, the "statutory scheme" demonstrates that the legislature knew how to target specific entities. *See,*

e.g., Iowa Code § 68A.503(1) (applying to corporations, insurance companies, savings associations, banks, and credit unions). Because IRTL fails to show that the board-authorization requirement treats corporations differently from other entities, Iowa Code subsections 68A.404(2)(a) and (b) are constitutional under the Equal Protection Clause, insofar as they do not differentiate between similarly situated speakers.

Unlike the board-authorization requirement, the certification requirement specifically targets corporations, requiring "certification by an officer *of the corporation*." *Id.* § 68A.404(5)(g) (emphasis added). Likewise, Form Ind–Exp–O's Statement of Certification requires certification only if "the organization making the expenditure is a corporation." Iowa claims that IRTL fails to show that the requirement "intentionally treat[s] [it] differently from others similarly situated." *See Village of Willowbrook v. Olech,* 528 U.S. 562, 564 (2000); *cf. Plyler v. Doe,* 457 U.S. 202, 216 (1982) ("The Equal Protection Clause directs that all persons similarly circumstanced shall be treated alike." (citation and internal quotation marks omitted)). But where a classification "impinge[s] upon the exercise of a 'fundamental right,'"it is "presumptively invidious." *Plyler,* 457 U.S. at 216-17 (footnote omitted). The burden is then on "the State to demonstrate that its classification has been [narrowly] tailored to serve a compelling governmental interest." *Id.* at 217; *see MCCL,* 692 F.3d at 879-80.

Engaging in political expression through independent expenditure is a fundamental right. *MCCL,* 692 F.3d at 879-80. Iowa must advance a compelling interest for the ***606** certification requirement, and then demonstrate that the requirement is narrowly tailored to serve that interest. Iowa argues correctly that the

board-authorization requirement does not single out corporations. But Iowa ignores the singular scope of the certification requirement. Nor does it advance any interest, compelling or otherwise, to justify singling out corporations. The certification requirement is unconstitutional under the Fourteenth Amendment.

Because the law is unconstitutional on its face, this court must determine whether the invalid portions can be severed. *See Neighborhood Enters., Inc. v. City of St. Louis,* 644 F.3d 728, 738 (8th Cir. 2011). Striking the offending language, the provision reads:

> 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 independent expenditure was incurred.

Iowa Code § 68A.404(5)(g). Striking the offending language from Form Ind–Exp–O provides:

> ~~If the organization making the expenditure is a corporation,~~ I affirm that the board of directors, executive council, or similar organizational leadership body expressly authorized funds for the independent expenditure by resolution or other affirmative action within the calendar year when the independent expenditure was incurred.

"The District Court did not consider the severability issue because it held that each of the challenged provisions was constitutional." *Neighborhood Enters.,* 644 F.3d at 738 (citation and internal quotation marks omitted). This court therefore remands to the district

court to determine whether the law can stand without the unconstitutional portions. *Id.* (citation and internal quotation marks omitted) (remanding "to the District Court to consider the severability issue in the first instance").

III.

To summarize:

Count 1. IRTL lacks standing to challenge the definitions under Iowa Code subsections 68A.102(18) and 68A.402(9).

Count 2. The first two sentences of Iowa Code subsection 68A.404(3), the second sentence of subsection 68A.404(3)(a), the entirety of subsection 68A.404(4)(a), the first and third sentences of Iowa Administrative Code rule 351–4.9(15), and Form Ind–Exp–O (except as noted in Part II.D.2.b) are constitutional as applied to IRTL and groups whose major purpose is not nominating or electing candidates. The first and third sentences of subsection 68A.404(3)(a), the second sentence of Iowa Administrative Code rule 351–4.9(15), the entirety of subsections 68A.404(3)(a)(1) and 68A.402B(3), and Form DR–3 are unconstitutional as applied to IRTL and groups whose major purpose is not nominating or electing candidates.

Count 3. Iowa Code section 68A.503 is constitutional under the First and Fourteenth Amendments.

Count 4. IRTL has standing to challenge under the First Amendment Iowa Code subsections 68A.404 (2)(a)-(b) and 68A.404(5)(g). IRTL has standing to challenge under the Fourteenth Amendment whether subsections 68A.404(2)(a)-(b) and 68A.404(5)(g) impose content-based restrictions that violate its right ***607** to equal protection. Subsections 68A.404(2)(a)-(b) are constitutional under the Equal Protection Clause, insofar as they do not differentiate between similarly situated

speakers. The clause "of the corporation" in Iowa Code subsection 68A.404(5)(g) and the clause "if the organization making the expenditure is a corporation" in Form Ind–Exp–O are unconstitutional under the Fourteenth Amendment. On remand, the district court shall consider severability.

* * * * * *

The judgment of the district court is affirmed in part, reversed in part, and the case remanded.

MELLOY, Circuit Judge, concurring.

I concur in the court's opinion in its entirety. However, I write separately to indicate that for the reasons discussed in my dissenting opinion in *Minnesota Citizens Concerned for Life, Inc. v. Swanson,* 692 F.3d 864 (8th Cir. 2012) (en banc), I would find the sections of the Iowa statute and related administrative rules discussed in sections B.2 and B.3 to be constitutional. However, I also recognize that the en banc court found similar provisions to be unconstitutional in *Minnesota Citizens Concerned for Life.* This panel is obligated to follow the precedent established by the en banc court and, therefore, I concur in the opinion in its entirety.

[Filed: 10/20/2010; Doc. 37]

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

IOWA RIGHT TO LIFE COMMITTEE, INC., Plaintiff, v. 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., Defendants.	4:10-cv-416 ORDER

On September 7, 2010, Iowa Right to Life Committee, Inc. ("IRTL") filed a "Verified Complaint for Declaratory and Injunctive Relief" against the above-captioned government officials (collectively, "Defendants"), alleging that several provisions of Iowa's campaign finance laws violate the First and Fourteenth Amendments of the United States Constitution. Clerk's No. 1. On the same date, IRTL also filed a Motion for Preliminary Injunction, which is currently before the Court.[1]

[1] IRTL also filed a motion to consolidate the preliminary injunction hearing with a trial on the merits. Clerk's No. 6. That motion is denied. *See* Fed. R. Civ. P. 65(a)(2).

Defendants filed their responses in opposition to IRTL's motion for a preliminary ***1024** injunction on September 14, 2010. Clerk's Nos. 20, 22. The Court held a hearing on the motion on September 15, 2010. *See* Clerk's No. 23. The matter is fully submitted.

I. FACTUAL BACKGROUND

A. *Recent Changes to Iowa Law*

1. *Pre-existing Iowa law.*

Prior to January 2010, the Iowa Code banned corporations from making both independent expenditures and campaign contributions. It provided that:

> Except as provided in subsections 3 and 4, it is unlawful for an insurance company, savings and loan association, bank, credit union, or corporation organized pursuant to the laws of this state, the United States, or any other state, territory, or foreign country, whether for profit or not, or an officer, agent, or representative acting for such insurance company, savings and loan association, bank, credit union, or corporation, to contribute any money, property, labor, or thing of value, directly or indirectly, to a committee, or to expressly advocate that the vote of an elector be used to nominate, elect, or defeat a candidate for public office, except that such resources may be so expended in connection with a utility franchise election held pursuant to section 364.2, subsection 4, or a ballot issue. All such expenditures are subject to the disclosure requirements of this chapter.

Iowa Code § 68A.503(1) (2009).[2]

[2] Except as otherwise indicated, the Court's citations to

However, while corporations were banned from using their own general treasury funds to make independent expenditures and contributions directly, they were allowed to do these things indirectly through political committees.[3] *See id.* § 68A.503(3) (allowing corporations to engage in election-related activities by sponsoring and financing their own "committees"); § 68A.102(8) (defining "committee" to "include[ ] a political committee and a candidate's committee"). A "political committee" was defined, in relevant part, as:

> An association, lodge, society, cooperative, union, fraternity, sorority, educational institution, civic organization, labor organization, religious organization, or professional organization that ... makes expenditures 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....

Id. § 68A.102(18)(b). If an organization "was originally organized for purposes other than engaging in election activities," but temporarily engaged in activities covered by § 68A.102(18), that organization was deemed a "permanent organization" and required to organize a political committee. *Id.* § 402(9). Both political commit-

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the Iowa Code refer to the current version of the code, as amended in April 2010.

[3] It also appears that there was an exception in the Iowa Administrative Code rules allowing corporations that qualified as "political corporations" to make independent expenditures. *See* Advisory Op. 2010-03 (Clerk's No. 20-1 at 12) (referring to Iowa Admin. Code r. 351–4.50). This rule was rescinded, effective May 2010. *See* Vol. XXXII Iowa Admin. Bulletin, No. 25 at 2713, Item 18, June 6, 2010.

tees and permanent organizations were required to segregate their election-related funds. *See id.; id.* § 68A.203(2)(d).

In addition to these provisions, § 68A. 404(3) required disclosure from any "person, other than a committee registered under this chapter" who made independent expenditures. The statute defined an independent expenditure as "one or more ***1025** expenditures in excess of one hundred dollars in the aggregate for a communication that expressly advocates the nomination, election, or defeat of a clearly identified candidate ... without the prior approval or coordination with a candidate [or] candidate's committee." *Id.* § 68A. 404(1). The statute expressly distinguished between persons covered by § 68A.404(3) and political committees. *See id.* § 68A.404(3)(b) ("This section *does not apply* to ... a political committee.") (emphasis added).

2. *The Supreme Court's Opinion in* Citizen's United.

In January 2010, the United States Supreme Court issued its opinion in *Citizens United v. Federal Election Commission. See* 558 U.S. 310 (2010). The federal statute at issue in *Citizens United* barred corporations "from using general treasury funds to make direct contributions to candidates or independent expenditures that expressly advocate the election or defeat of a candidate" in certain federal elections. *Id.* at 887 (citing 2 U.S.C. § 441b). The statute, however, allowed corporations to establish "a 'separate segregated fund' (known as a political action committee, or PAC) for these purposes." *Id.* Although § 441b applied to contributions and independent expenditures, the Supreme Court limited its discussion to independent expenditures. *See id.* at 909 ("Citizens United has not made

direct contributions to candidates, and it has not suggested that the Court should reconsider whether contribution limits should be subjected to rigorous First Amendment scrutiny.").

The Supreme Court stated that, as it pertained to independent expenditures, § 441b was a ban on corporate speech. *Id.* at 897. The Court reasoned that a PAC is a separate entity from the corporation itself; therefore, even though the statute allowed PACs to speak, it still did not allow the corporations themselves to speak. *Id.* Because the statute was a ban on speech, the Supreme Court analyzed it under strict scrutiny. *Id.* at 888. A previous Supreme Court case, *Austin v. Michigan Chamber of Commerce,* had upheld restrictions based on the fact that a speaker was a corporation. *See id.* at 903 (citing *Austin v. Mich. Chamber of Commerce,* 494 U.S. 652, 695 (1990)). But in *Citizens United,* the Supreme Court overruled that portion of *Austin* and concluded that "the Government may not suppress political speech on the basis of the speaker's corporate identity" because "[n]o sufficient governmental interest justifies" banning speech on that basis. *See id.* at 913. Accordingly, the Court held that the federal ban on corporate independent expenditures was invalid. *Id.*

Notably, although the Supreme Court struck down the federal ban on independent expenditures, it upheld federal disclosure and disclaimer requirements for independent expenditures. *Id.* at 913-14. The Supreme Court stated that "the public has an interest in knowing who is speaking about a candidate shortly before an election," and concluded that this informational interest alone was sufficient to justify the federal disclosure requirements. *Id.* at 915-16. The Supreme Court

also touted the benefits of prompt disclosures:

> 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 ***1026** 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 (internal quotation marks and citations omitted).

Therefore, under *Citizens United,* "[t]he Government may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether." *Id.* at 886.

3. *Iowa's response.*

a. *Amendments to the Iowa Code.*

In response to *Citizens United,* the Iowa Legislature passed several amendments to Iowa's campaign-finance laws. Defs.' Resp. to Pl.'s Mot. for Prelim. Inj. (hereinafter "Defs.' Br.") at 3 (Clerk's No. 20); Smithson Aff. ¶ 5 (Clerk's No. 20–1); Prelim. Inj. Hr'g Tr. (hereinafter "Hr'g Tr.") 37:3–7 (Clerk's No. 35); Senate File 2354, 83rd G.A., 2d. Sess., *as reprinted in* 2010 Iowa Legis. Serv. S.F. 2354 (West) (hereinafter "S.F. 2354").

Most significantly, the Iowa Legislature deleted the text of § 68A.503 in its entirety and replaced it with new language, eliminating the ban on corporate independent expenditures and narrowing the scope of banned contributions. *See* S.F. 2354 § 5. The new text of § 68A.503 also exempted the use of corporate "funds for independent expenditures as provided in section 68A.404." Iowa Code § 68A.503(4)(d).

The Iowa Legislature made other notable changes. It amended the definition of an "independent expenditure" to change the threshold from one hundred dollars to seven hundred fifty dollars. S.F. 2354 § 3 (amending Iowa Code § 68A.404(1)). The Iowa Legislature also added a requirement that organizations "other than an individual or individuals" obtain approval by "a majority of the entity's board of directors, executive council, or similar organizational leadership body" before using general treasury funds for independent expenditures. *See id.* (amending Iowa Code § 68A.404(2)(a)-(b)). Finally, the Iowa Legislature also made a number of changes related to independent expenditure reporting, including a requirement that persons covered by § 68A.404(3) file a "termination report" if they decide to stop making independent expenditures. *See id.* §§ 2–3. All of these amendments became effective on April 8, 2010. *Id.* § 7.

In particular, the Iowa Legislature did not make any changes to § 68A.102. *See id.* §§ 1–7. Section 68A.102 provides definitions to be used in Chapter 68A "unless the context otherwise requires." Iowa Code § 68A.102. Therefore, the definitions of "political committee" and "permanent organization" remain the same. *See* S.F. 2354 §§ 1-7. The Iowa Legislature also did not change the portions of § 68A.404(3) that limited that section's applicability to any "person, other than

a committee registered under this chapter" or that expressly excluded political committees from its scope. *See id.* § 3. Therefore, it is still clear, from the plain text of the statute, that the persons covered by § 68A.404(3) are a separate category from committees, including political committees. *See* Iowa Code §§ 68A.404, 404(3).

However, by removing the ban on corporate independent expenditures and not amending the definitions, the Iowa Legislature unearthed some previously latent ambiguity as to the proper interplay between § 68A.404(3) and § 68A.102(18). *See* S.F. 2354 § 5 (striking the former version of § 68A.503 in its entirety). That ambiguity stems from the overlap between the scope of § 68A.404(3) and the definition of a "political committee" in § 68A.102(18). If an organization has not yet "registered as a committee," but ***1027** makes an independent expenditure totaling more than $750.00, it would fall under the plain text of both sections. *See* Iowa Code §§ 68A.404(3), 68A.102(18). But, based on the plain text of § 68A.404, it cannot be both a political committee and also "a person, other than a committee." *See* Iowa Code § 68A.404(3), (3)(b). Prior to the April 2010 amendments, this tension was ameliorated by § 68A.503, at least as to corporations. Because the former text of § 68A.503 barred corporations from making independent expenditures, they could not lawfully take actions within the scope of § 68A.404(3)(b) without forming a political committee. *See* Iowa Code § 68A.503(1)-(3) (2009). Therefore, under the pre-April 2010 statute, the choice between these two definitions was simple—corporations had to be covered by § 68A.102(18), not § 68A.404(3). The current text of the statute, however, does not clarify how these two sections should be applied when an organization arguably falls

under both definitions.

b. *Amendments to the Iowa Administrative Code rules.*

In addition to amending the text of the statute, the Iowa Legislature authorized the Iowa Ethics & Campaign Disclosure Board (the "Board") to promulgate emergency rules to implement the new provisions in time for the June 2010 primary. S.F. 2354 § 6. Accordingly, the Board made a number of changes to the existing rules, and added a number of new provisions, effective May 17, 2010. Vol. XXXII Iowa Admin. Bulletin, No. 25 (hereinafter "IAB") at 2706–14, June 6, 2010; *see also* Smithson Aff. ¶ 6; Defs.' Br. at 3. Two of these changes are particularly relevant to the instant case.

First, the Board created a new category of regulated entities called "independent expenditure committees." IAB at 2707, Item 1 (adding "new paragraph 4.1 (1)'d'"). Although the Board decided to call this new category of entities "independent expenditure committees," it did not make them a subset of "committees." *See* Iowa Admin. Code r. 351–4.1(1).[4] Instead, the Board amended the rules to create three separate categories of regulated entities, each subject to different reporting requirements, specifically: (1) "committees" (including "political committees," also known as "PACs"); (2) "permanent organizations temporarily engaging in political activity"; and (3) "independent expenditure committees." *Id.; see also id.* r. 351–4.27 (68A) (distinguishing between the reporting required of "independent expenditure committees" and "commit-

[4] Unless otherwise indicated, the Court's citations to the Iowa Administrative Rules refer to the current version of those rules, as amended effective May 2010.

tees").

The Board defined an "independent expenditure committee" as an organization that is required to file an independent expenditure statement under § 68A. 404(3). *See id.* r. 351–4.1(1)(d) ("A person that is required to file campaign disclosure reports pursuant to 2009 Iowa Code Supplement section 68A.404(3) *'a'* as amended by 2010 Iowa Acts, Senate File 2354, section 3, due to the filing of an independent expenditure statement (Form Ind–Exp–O) shall be referred to as an 'independent expenditure committee.'"); *see also id.* at 2708, Item 7 (amending rule 351–4.27(68A) to provide that organizations making independent expenditures must file Form Ind–Exp–O, while individuals making independent expenditures must file Form Ind–Exp–I). Strikingly, the term "independent expenditure committee" does not appear in the statute. *See* Iowa Code §§ 68A.404, 68A.102. However, the Court adopts the Board's definition of an independent expenditure committee for the purposes of this opinion. ***1028**

Second, the Board made changes to its substantive rules regarding the reporting of independent expenditures. For example, the Board created a separate set of reporting requirements for independent expenditure committees.[5] IAB at 2707, Item 3 (adding "new subrule 4.9(15)"). The Board also amended its rule regarding dissolution to state that independent expenditure committees are not required to file final bank statements when they file termination reports. *See id.* at 2713, Item 22 (amending rule 351–4.55(5)).

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[5] This new rule, 351–4.9(15), is the only rule challenged by IRTL. *See* Mot. at 1 (Clerk's No. 2) (asking the Court to enjoin Iowa Admin. Code r. 351–4.9(15)).

B. *The Parties and This Lawsuit*

IRTL is a "non-stock, nonprofit Iowa corporation" that is classified as a social welfare organization under 26 U.S.C. § 501(c)(4). Compl. ¶¶ 6, 15. IRTL is the Iowa affiliate of the National Right to Life Committee, Inc. *Id.* ¶ 14. According to IRTL, its "primary purpose" is "to present factual information" on various social issues, including abortion and euthanasia and "its major purpose is not and will never be the nomination or election of candidates." *Id.* ¶¶ 14-15. Defendants are various governmental officers who have the power to enforce the challenged provisions of Iowa's campaign-finance laws.[6] *See id.* ¶¶ 8-10.

At some point in August, "an attorney from the office of IRTL's lead counsel contacted [the Board's] Legal Counsel, Charles Smithson, regarding the issue of ongoing reporting" Compl. at 14 n. 12; Smithson Aff. ¶ 7. But IRTL's counsel did not mention IRTL in that call. Smithson Aff. ¶ 7. And IRTL has not sought a formal advisory opinion from the Board. *Id.*

IRTL alleges that, prior to October 14, 2010, it wants to: (1) "make a single independent expenditure totaling more than $750, to support the election of Brenna Findley, candidate for Attorney General," specifically, IRTL wants to create a "mailer expressing support of Ms. Findley's pro-life beliefs" to be "sent to IRTL's general mailing list"; and (2) make a $100 contribution to Ms. Findley. Compl. ¶¶ 16, 19. IRTL also alleges that it plans to engage in unspecified, but "materially similar" activities in the future. Pl.'s Br. in

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[6] IRTL originally named Iowa Attorney General Tom Miller as a defendant. *Id.* ¶ 7. However, IRTL has since stipulated to Miller's dismissal and he is no longer a defendant in this case. *See* Clerk's Nos. 34, 36.

Supp. of Mot. for Prelim. Inj. (hereinafter "Pl.'s Br.") at 2 (Clerk's No. 2–1); *see also* Compl. ¶ 20. IRTL argues that it is "chilled from doing [these things] due to the burdens imposed by the restrictions challenged here and the potential civil and criminal penalties for violating the challenged provisions." Pl.'s Br. at 1.

II. LAW AND ANALYSIS

IRTL requests that the Court issue a preliminary injunction enjoining the Defendants from enforcing several provisions of Iowa election law against IRTL. Mot. at 1-2 (Clerk's No. 2); Pl.'s Br. at 2, 31. This Court believes that the power to grant a preliminary injunction is an awesome power vested in the district court, recognizing that it 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 test for a preliminary injunction involves consideration of four factors: (1) the probability that the movant will succeed on the merits; (2) the threat of irreparable harm to the movant; (3) the state of the balance between this harm and the injury that granting the injunction will inflict on other parties and litigants; and (4) ***1029** the public interest. *Dataphase Sys., Inc. v. C L Sys., Inc.,* 640 F.2d 109, 113 (8th Cir. 1981) (en banc). IRTL has the burden of showing that a preliminary injunction should be granted. *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)). However, as to the merits, "the burdens at the preliminary injunction stage track the burdens at trial." *Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal,* 546 U.S. 418, 419 (2006). The Court will

consider each of the *Dataphase* factors in turn.

A. *Probability of Success on the Merits*

The first factor the Court must consider in deciding whether to issue a preliminary injunction is the likelihood that Plaintiff will succeed on the merits. Because IRTL seeks a preliminary injunction against the enforcement of a state statute, it must "demonstrate more than just a 'fair chance' that it will succeed on the merits." *See Planned Parenthood Minn. v. Rounds,* 530 F.3d 724, 731-32 (8th Cir. 2008) (en banc). Instead, IRTL must meet a more rigorous standard, demonstrating that it is "likely to prevail on the merits." *Id.* at 732 (quoting *Doran v. Salem Inn, Inc.,* 422 U.S. 922, 931 (1975)). This more "rigorous standard 'reflects the idea that governmental policies implemented through legislation or regulations developed through presumptively reasoned democratic processes are entitled to a higher degree of deference and should not be enjoined lightly.' " *Id.* (quoting *Able v. United States,* 44 F.3d 128, 131 (2d Cir. 1995)). "If the party with the burden of proof makes a threshold showing that it is likely to prevail on the merits, the district court should then proceed to weigh the other *Dataphase* factors." *Id.* The Eighth Circuit has stated that "[b]y re-emphasizing this more rigorous standard for demonstrating a likelihood of success on the merits in these cases, we hope to ensure that preliminary injunctions that thwart a state's presumptively reasonable democratic processes are pronounced only after an appropriately deferential analysis." *Id.* at 733.

1. *Standing.*

"Article III of the Constitution limits federal jurisdiction to cases and controversies, and the 'core component of standing is an essential and unchanging part

of the case-or-controversy requirement.' " *Advantage Media, L.L.C. v. City of Eden Prairie,* 456 F.3d 793, 799 (8th Cir. 2006) (quoting *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560 (1992)). Therefore, "[a] federal court bears the burden of examining standing at all stages of litigation, even if the parties do not raise the issue themselves." *Harmon v. City of Kansas City,* 197 F.3d 321, 327 (8th Cir. 1999).

> In order to prove standing, a plaintiff must demonstrate: (1) an actual injury that is concrete and particularized and not conjectural or hypothetical; (2) a causal connection between the injury and the defendant's conduct; and (3) a likelihood, and not a mere speculative possibility, that the plaintiff's injury will be redressed by a favorable decision.

Nat'l Right to Life Political Action Comm. v. Connor, 323 F.3d 684, 689 (8th Cir. 2003) (citing *Lujan,* 504 U.S. at 560-61. "[S]tanding cannot be inferred argumentatively from averments in the pleadings, but rather must affirmatively appear in the record." *FW/PBS, Inc. v. City of Dallas,* 493 U.S. 215, 231 (1990) (internal citation marks and quotation omitted), *overruled on other grounds by City of Littleton* ***1030** *v. Z.J. Gifts D-4, L.L.C.,* 541 U.S. 774 (2004).

> [I]n the First Amendment context, even though Plaintiffs are not required to await and undergo a criminal prosecution, they must face a credible threat of present or future prosecution under the statute for a claimed chilling effect to confer standing to challenge the constitutionality of a statute that both provides for criminal penalties and abridges First Amendment rights.

Zanders v. Swanson, 573 F.3d 591, 593 (8th Cir. 2009).

Therefore, in order to demonstrate standing to challenge a particular provision of Iowa law, IRTL must "allege[ ] an actual and well-founded fear that the law will be enforced against" it. *See Virginia v. Am. Booksellers Ass'n,* 484 U.S. 383, 393 (1988); *see also Wis. Right to Life, Inc. v. Paradise,* 138 F.3d 1183, 1185 (7th Cir. 1998) ("We may assume that WRTL has genuine apprehension about what lies ahead. But is its concern objectively 'well-founded'? If not, Article III of the Constitution precludes a federal court from ruling.").

IRTL has alleged four counts in its complaint. A number of IRTL's claims raise standing concerns. The Court will consider each count in turn.

a. *Count 1: Iowa's definitions of "political committee" and "permanent organization.*"

In Count 1 of its complaint, IRTL challenges Iowa Code §§ 68A.102(18) and 68A.402(9), which define "political committee," and "permanent organization," respectively. Compl. ¶ 23. IRTL also asks the Court to enjoin enforcement of these sections in the instant motion. Mot. at 1.

IRTL's main contention is that if IRTL makes $750.00 in independent expenditures, it will be "defined by statute as a political committee."[7] Compl. ¶ 18 (citing Iowa Code § 68A.102(18)); *see also* Pl.'s Br.

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[7] IRTL cannot be a permanent organization unless its activities fall under the definition in § 68A.102(18). *See* Iowa Code § 68A.402(9) (pertaining to an organization "temporarily engaging in activity described in section 68A.102, subsection 18"). Therefore, the Court will focus its analysis on § 68A.102(18).

at 6. Under § 68A.102(18),

> "Political committee" means any of the following:
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> 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 ***1031** seven hundred fifty dollars in the ag-

> gregate 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.

Iowa Code § 68A.102(18). Even if IRTL is correct that it falls under this definition, IRTL cannot be covered by § 68A.102(18) unless Iowa interprets it in an unconstitutional manner.

In *Citizens United,* the Supreme Court held that a federal ban on corporate independent expenditures was unconstitutional. 130 S.Ct. at 913. The federal statute at issue in *Citizens United* allowed corporations to set up a "separate segregated fund" to make independent expenditures. *Id.* at 887-88 (citing 2 U.S.C. § 441b (b)(2)). The Supreme Court held that this was unconstitutional because the PAC option did not allow corporations to speak for themselves. *Id.* at 897. Thus, under *Citizens United,* Iowa may not constitutionally require corporations to use segregated funds in order to make independent expenditures. *See id.* Under Iowa law, both political committees and permanent organization must keep their election-related funds segregated from their general treasury funds.[8] Iowa Code §§ 68A.203 (2)(d); 68A.402(9). Therefore, in light of *Citizens United,* Iowa may not interpret § 68A.102(18) or § 68A. 402(9) to include corporations that make only independent expenditures without running afoul of the Constitution.[9] Thus, IRTL would only be covered by

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[8] The Court needs not, and therefore does not, decide whether Iowa's regulations for political committees and permanent organizations are otherwise analogous to the federal PAC regulations at issue in *Citizens United.*

[9] IRTL does not allege that it wishes to engage in any

these provisions if Iowa interpreted them in a manner prohibited by *Citizens United.*

There is no indication in the record, however, that Iowa "intends to interpret its own [statute] in contradiction to this established law." *See W. Tradition P'ship v. City of Longmont,* No. 09-cv-2303, 2009 WL 3418220, at *7 (D. Colo. Oct. 21, 2009). And "there is nothing on the face of the statute to prevent it from being construed and enforced in a constitutional manner." *Cf. Nat'l Right to Life Political Action Comm. v. Lamb,* 202 F.Supp.2d 995, 1012 (W.D. Mo.2002), *aff'd sub nom. Nat'l Right to Life Political Action Comm. v. Connor,* 323 F.3d 684 (8th Cir. 2003) (finding that a challenged statute was amenable to a narrowing construction). To the contrary, all of the evidence currently before the Court indicates that Iowa already interprets these provisions to exclude corporations that make only independent expenditures. *See, e.g.,* Advisory Op. 2010-03 (Clerk's No. 20-1 at 13) ("[A]n independent expenditure committee will not be subject to the same registration and reporting requirements as a PAC."); *id.* at 12 (stating that "corporations may make independent expenditures so long as the disclosure provisions of Iowa Code section 68A.404 [which govern independent expendi-

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activities, other than making independent expenditures, that might fall under the purview of § 68A.102(18) or § 68A.402(9). *See* Clerk's No. 1. Therefore, this case does not present, and the Court declines to issue any opinion on, how these definitions might be applied to organizations involved in other forms of express advocacy not affected by *Citizens United,* such as coordinated expenditures. *See generally* Advisory Op. 2010-01 (Clerk's No. 20-1 at 10) (distinguishing between independent and coordinated expenditures).

ture committees] are followed"); *see also* Iowa Admin. Code r. 351–4.1(1) (providing different rules for independent expenditure committees, permanent organizations and political committees). ***1032**

Indeed, Defendants insist that IRTL will not be considered a political committee if it makes its intended expenditure. *See* Hr'g Tr. 28:8-16 (arguing that this is "clear from ... a plain reading of the statute" that IRTL will be an independent expenditure committee, not a political committee); *see also id.* 26:5-6 ("If you want to make an independent expenditure, you don't have to be a PAC...."); Smithson Aff. ¶ 9 ("The Board has created Form Ind–Exp–O for organizations such as IRTL that make independent expenditures."); Defs.' Br. at 4 n. 1 (indicating that IRTL would be considered an independent expenditure committee) *id.* at 4 n. 2 (same). And, at the hearing, IRTL's counsel conceded that "[t]he State in its [advisory opinion] has said that [IRTL] will not be subject to the same types of restrictions that a political committee will be subject to...." Hr'g Tr. 9:1-3. The Court finds, therefore, that it is more likely than not that Iowa will apply §§ 68A. 102(18) and 68A.404(9) in a manner that is consistent with *Citizens United.* Accordingly, IRTL has failed to show that there is a credible threat that Iowa will interpret these provisions as applying to IRTL's intended activities or threaten to enforce them against IRTL. *See Lamb,* 202 F.Supp.2d at 1010.

The Court also finds that IRTL's alleged fears that those provisions will be enforced against IRTL are not objectively well-founded in light of the statute, regulations, and the evidence in the record. IRTL offers two arguments in support of the proposition that its speech has been chilled, one based on the statutory text and one based on the Board's application of that text. *See*

Pl.'s Br. at 6. First, IRTL argues that, no matter how the relevant officials interpret the statute, IRTL is still a political committee under the plain text of the statute. Hr'g Tr. 9:1-7; *see also* Pl.'s Br. at 6; Compl. ¶ 18. As discussed above, there is some ambiguity in the statute on this point.[10] Thus, this is not a case where the challenged provisions clearly target the plaintiff's activities, creating a clear threat of enforcement. *Cf. Ark. Right to Life State Political Action Comm. v. Butler,* 146 F.3d 558, 560 (8th Cir. 1998) (affirming a determination that the plaintiffs had standing where they were clearly "a target or object of the prohibitions" in the challenged provision). And, to the extent that IRTL is arguing that the relevant officials might change their interpretation of the statute, this Court declines to offer an advisory opinion.

Second, IRTL argues that the Board uses a "vague we-know-it-when-we-see-it approach" to determine whether an organization qualifies as a political committee. *See* Pl.'s Br. at 6. However, the only support IRTL cites for this assertion is Advisory Opinion 2010-03.[11] *Id.* That advisory opinion does not state—or even suggest—a "vague we-know-it-when-we-see-it approach." *See* Advisory Op. 2010-03. To the contrary,

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[10] The Court also notes that there is also some tension with IRTL's reliance on a plain-text argument when IRTL's counsel has repeatedly described Iowa's regulatory scheme as "confusing." Hr'g Tr. 10:15 ("The scheme is confusing."); *see also id.* 9:22–23 (arguing that the Court "will remove confusion" if it grants IRTL's motion).

[11] In its brief, IRTL cites to Advisory Opinion "2010-05," but clarified at the hearing that this was a "clerical error" and that it meant Advisory Opinion 2010-03. Hr'g Tr. 10:8-9.

that opinion clearly indicates that organizations that spend more than $750.00 on express advocacy are subject to disclosure requirements, but those requirements vary depending on an organization's exact activities. *See id.; see also* Iowa Admin. Code r. 351–4.1(1). Because IRTL's reading of this opinion is patently unreasonable, the Court finds that IRTL's ***1033** citation to it does not demonstrate that there is a credible risk that the Board will use a "vague we-know-it-when-we-see-it approach" to determine whether IRTL qualifies as a political committee.

For all of these reasons, the Court concludes that IRTL has not demonstrated that it has standing to challenge Iowa Code § 68A.102(18) or § 68A.402(9). Therefore, on the current record, IRTL is not likely to succeed on the merits of its constitutional challenges to these provisions.

b. *Count 2: Iowa's requirements for independent expenditure committees.*

In Count 2 of its complaint, IRTL challenges Iowa Code §§ 68A.402B(3), 68A.404(3), 68A.404(4), Iowa Administrative Code Rule 351–4.9(15), Form Ind–Exp–O and Board Form DR–3.[12] Compl. ¶ 30. IRTL also asks the Court to preliminarily enjoin enforcement of these provisions. Mot. at 1. All of these provisions apply to persons required to file independent expenditure state-

[12] There is some inconsistency in the record as to the precise title of this form. The form itself, as submitted by IRTL, is titled "DR3—Dissolution." *See* Clerk's No. 1-2 at 2. However, the Iowa Administrative Code Rules refer to the "statement of dissolution" as "Form DR–3." Iowa Admin. Code r. § 351—4.55(1); *see also* Compl. ¶ 3(b) (referring to the challenged form as "Form DR–3"). The Court will refer to this form as "Form DR–3."

ments under § 68A.404, i.e., any "person, other than a committee registered under this chapter, that makes one or more independent expenditures." *See* Iowa Code § 68A.404(3). IRTL is not currently registered as a committee.[13] *See* Compl. ¶ 18. And it alleges that it intends to make one or more independent expenditures. *Id.* ¶ 16. Therefore, IRTL's intended activities fall under the plain text of § 68A.404(3). Defendants do not dispute that those provisions apply to IRTL. *See* Defs.' Br. at 4-5, 73; Smithson Aff. ¶ 9. The Court concludes that IRTL has standing to challenge these provisions.

c. *Count 3: Iowa's ban on corporate campaign contributions.*

IRTL also asks this Court to enjoin enforcement of Iowa Code § 68A.503. Mot. at 1. As amended in April 2010, § 68A.503 provides that, subject to some exceptions, "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." Iowa Code § 68A.503(1). Section 68A.503 clearly targets IRTL's intended conduct—making a campaign contribution. Compl. ¶ 19. Defendants do not dispute that this ban applies to IRTL. *See generally* Defs.' Br. at 13-15; Smithson Aff. ¶ 15. Therefore, IRTL has standing to challenge § 68A.503.

d. *Count 4: Iowa's requirement of board (or equivalent) approval.*

In Count 4 of its complaint, IRTL challenges Iowa Code §§ 68A.404(2)(a)-(b), 68A.404(5)(g), and Form Ind–Exp–O. Compl. ¶ 45. IRTL has asked the Court to

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[13] It does appear, however, that IRTL has already established a separate PAC. Smithson Aff. ¶ 14.

enjoin these provisions. Mot. at 1-2.

Section 68A.404(2) 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 ***1034** 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, executive council, or similar organizational leadership body 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.

Section 68A.404(5)(g) states that an independent expenditure statement must include, *inter alia*:

> 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 independent expenditure was incurred.

IRTL also objects to the "Statement of Certification" on Form Ind–Exp–O, which states, in relevant part:

> I affirm that the independent expenditure reported above is accurate. I also affirm that this expenditure was made without the prior approval or in coordination with the benefiting committee. I understand that by filing this form, I am subject to the campaign laws in Iowa Code chapter 68A and administrative rules in chapter 351. I also understand that the failure to timely file this form leads to the imposition of civil penalties and the intentional failure to file the form may lead to additional civil and criminal sanctions. If this expenditure was made by a corporation that the board of directors, executive council, or similar organizational leadership body expressly authorized the expenditure by resolution or other affirmative action this year.

See Form Ind–Exp–O (Clerk's No. 1-1).

IRTL argues that these provisions are unconstitutional both "facially and as applied to IRTL," in violation of the First and Fourteenth Amendments. Compl. ¶ 53. The Court will address whether IRTL has standing to make arguments under each of these Amendments in turn.

i. First Amendment.

"[W]hen a party brings a pre-enforcement challenge to a statute that both provides for criminal penalties and abridges First Amendment rights,'a credible threat of present or future prosecution itself works an injury that is sufficient to confer standing.'" *Minn. Citizens Concerned for Life v. Fed. Election Comm'n,* 113

F.3d 129, 131 (8th Cir. 1997) (quoting *N.H. Right to Life Political Action Comm. v. Gardner,* 99 F.3d 8, 13 (1st Cir. 1996)). The Iowa campaign-finance statute does provide for criminal penalties. *See* Iowa Code § 68A.701 ("Any person who willfully violates any provisions of this chapter shall upon conviction, be guilty of a serious misdemeanor."). Therefore, IRTL "suffers Article III injury when it must either make significant changes to its operations to obey the regulation, or risk a criminal enforcement action by disobeying the regulation." *See Minn. Citizens Concerned for Life,* 113 F.3d at 131. But IRTL has not alleged either of these things.

First, IRTL has not alleged that it must make any changes to its current operating procedures, let alone any significant changes. *See* Compl. ¶¶ 44-53. IRTL alleges only that these requirements "burden[ ] IRTL's ability to select the ***1035** most effective means of advancing its cause." *Id.* ¶ 51. At most, this allegation suggests that, at some point, IRTL *might* like to select some different "means" that are somehow more "effective" than what is required by the statute. Such speculative, hypothetical allegations are not sufficient to bestow standing. Likewise, IRTL's suggestion that these provisions might burden the "inner workings and decision-making process of a citizen-group engaged in core political speech," fails to state any concrete, particularized injury to IRTL. *Id.* Indeed, if IRTL's board approved independent expenditures prior to the passage of S.F. 2354, then IRTL would not have to make *any* changes. If that is the case, then IRTL's claim would also lack the requisite element of redressibility. *See Advantage Media,* 456 F.3d at 801; *Wis. Right to Life, Inc.,* 138 F.3d at 1185.

Second, IRTL has not alleged that it plans to make any expenditures without complying with the challenged provisions. *See* Compl. ¶¶ 44-53. Therefore, IRTL has not alleged that it will "risk criminal enforcement action by disobeying the regulation." *See Minn. Citizens Concerned for Life,* 113 F.3d at 131; *see also Babbitt v. United Farm Workers Nat'l Union,* 442 U.S. 289, 298 (1979) (stating that a claim is justiciable "[w]hen the plaintiff has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder....").

IRTL has not pled sufficient facts to allow the Court to conclude that it has suffered a First Amendment "injury in fact" caused by the challenged provisions. Therefore, IRTL has failed to demonstrate that it has standing to challenge these provisions based on the First Amendment. *See Lamb,* 202 F.Supp.2d at 1003.

ii. Fourteenth Amendment.

IRTL also alleges that the challenged provisions violate the Fourteenth Amendment. Compl. ¶ 52. In its brief, IRTL only argues that these provisions violate the Fourteenth Amendment because they violate the First Amendment. *See* Pl.'s Br. at 29-30 ("As demonstrated above in the First Amendment argument section, Iowa is unable to prove that the prior-board-approval requirement is narrowly tailored to a compelling state interest (or substantially related to any state interest). For the same reasons, the requirement fails strict (or lesser) scrutiny under equal protection."). It is true that "[t]he Equal Protection Clause requires that statutes affecting First Amendment interests be narrowly tailored to their legitimate objectives." *Police*

Dep't of City of Chicago v. Mosley, 408 U.S. 92, 101 (1972). But Article III's requirements "appl[y] with as much force in the equal protection context as in any other." *See United States v. Hays,* 515 U.S. 737, 743 (1995). As discussed above, IRTL has not alleged a First Amendment injury. Therefore, IRTL has not demonstrated that it has standing to bring a Fourteenth Amendment claim based only on a violation of the First Amendment.

To the extent, however, that IRTL is stating a separate disparate treatment claim, the Court is satisfied that IRTL has standing. In its complaint, IRTL alleges that the challenged provisions "unconstitutionally burden[] 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." Compl. ¶ 52. This is sufficient to demonstrate standing. *See Russell v. Burris,* 146 F.3d 563, 572 (8th Cir. 1998) ***1036** (rejecting an argument that certain PACs lacked standing because the challenged provisions burdened those PACs more than other PACs); *Gray v. City of Valley Park,* 567 F.3d 976, 984 (8th Cir. 2009) ("It is customary that 'the court must accept all factual allegations in the complaint as true and draw all inferences in the plaintiff's favor' when making a determination on standing.") (quoting *Young Am. Corp. v. Affiliated Computer Servs. (ACS), Inc.,* 424 F.3d 840, 843 (8th Cir. 2005)).

Having concluded that IRTL has demonstrated that it has standing to maintain some of its claims, the Court proceeds to consider the merits of those remaining claims.

2. *Iowa's requirements for independent expenditure committees.*

IRTL argues that Iowa Code §§ 68.402B(3), 68A.404(3), 68A.404(4), Iowa Administrative Code rule 351– 4.9(15), Form Ind–Exp–O, and Form DR–3 are all unconstitutional, both facially and as applied to IRTL. Pl.'s Br. at 11-12. These provisions create a number of obligations for groups that are classified as independent expenditure committees.IRTL does not seriously dispute that the government has valid interests in disclosure. *See* Hr'g Tr. 49:16-19 ("We are not asking you to take away disclosure, we think disclosure is good. We think disclaimers are important. We think that does serve the informational interest, and we think that is important to the public to know who is speaking."). Rather, IRTL focuses its attack on the "fit" of Iowa's regulations to those interests. In doing so, IRTL makes two categories of arguments—broad, generalized arguments that it apparently aims at all of the challenged provisions as well as specific arguments against particular provisions. The Court will address each of these groups of arguments in turn.

a. *Generalized arguments.*

IRTL makes two generalized arguments against all of the challenged provisions. However, the Court finds neither of these arguments to be persuasive.

i. Least-restrictive means.

IRTL's main argument is that Iowa's regulations are onerous because they are not the least-restrictive means for meeting the state's interests. Hr'g Tr. 49:5-6; *see also* Pl.'s Br. at 8-9 ("In analyzing the constitutionality of Iowa's scheme, it is important to compare it to the less-restrictive, independent-expenditure federal scheme...."). The least restrictive means test applies only to a strict scrutiny analysis. *See N.C. Right to Life, Inc. v. Leake,* 525 F.3d 274, 331 (4th Cir. 2008) (Mi-

chael, J., dissenting); *see also Nixon v. Shrink Mo. Gov't PAC,* 528 U.S. 377, 400 (2000) (Breyer, J., concurring) (noting that "least restrictive means" is a test associated with strict scrutiny review). IRTL argues that these requirements are subject to strict scrutiny because they are "PAC-style" requirements that "impose the *kind* of burdens imposed on PACs." *Id.* at 8. The Court does not agree. Unlike the federal ban that was at issue in *Citizens United,* the requirements contested here "impose no ceiling on campaign-related activities and do not prevent anyone from speaking." *See Citizens United,* 130 S.Ct. at 914 (quoting *Buckley v. Valeo,* 424 U.S. 1, 64 (1976) and *McConnell v. Fed. Election Comm'n,* 540 U.S. 93, 201 (2003)) (internal quotation marks omitted); *see also* Iowa Code §§ 68. 402B(3), 68A.404(3), 68A. 404(4); Iowa Administrative Code rule 351–4.9(15); Form Ind–Exp–O; Form DR–3. Therefore, although they "may burden the ability to speak," they are not subject to strict scrutiny. *Citizens United,* 130 S.Ct. at 914. Instead, they are subject to exacting scrutiny.***1037** *See id.; see also Doe v. Reed,* 130 S.Ct. 2811, 2818 (2010) (applying exacting scrutiny where the challenged provision was "not a prohibition on speech, but instead a *disclosure* requirement"); *SpeechNow.org v. Fed. Election Comm'n,* 599 F.3d 686, 691, 696 (D.C. Cir. 2010) (en banc) (applying exacting scrutiny to federal "organizational, administrative, and continuous reporting requirements" for political committees).Under exacting scrutiny, Iowa is not required to employ the "least-restrictive means to meet a compelling government interest." *See Citizens United,* 130 S.Ct. at 914 (requiring only a "substantial relation" to a "sufficiently important" interest). Therefore, even if less-burdensome alternatives do exist, that fact does not, contrary to IRTL's contentions, render these provi-

sions unconstitutional.

ii. Major purpose "test"

IRTL argues that the challenged provisions "violate *Buckley*'s mandate that burdensome PAC-style regulations may be imposed only on 'organizations that are under the control of a candidate or the *major purpose* of which is the nomination or election of a candidate.'" Pl.'s Br. at 11 (citing *Buckley,* 424 U.S. at 79). But the Court reads no such "mandate" in *Buckley*.

In the portion of *Buckley* relied upon by IRTL, the Supreme Court considered federal disclosure requirements and specifically approved of such disclosures, as long as they were limited to "spending that is unambiguously related to the campaign of a particular federal candidate." *Buckley,* 424 U.S. at 80. The Supreme Court reasoned that expenditures made by organizations that were "under the control of a candidate or the major purpose of which is the nomination or election of a candidate" were, "by definition, campaign related." *Id.* at 79. Therefore, Congress could require such organizations to disclose all of their expenditures, i.e., they could be regulated as "political committees." *See id.* For other organizations, however, Congress could only require disclosure of "spending that is unambiguously related to the campaign of a particular ... candidate." *Id.* at 80. When limited in this way, the Supreme Court concluded that the disclosure requirements had "a sufficient relationship to a substantial governmental interest." *Id.*

Therefore, the Court concludes that "*Buckley*'s statement—that defining groups with 'the major purpose' of political advocacy as political committees is sufficient 'to fulfill the purposes of the Act[ ]'—does not indicate that an entity must have that major purpose

to be deemed constitutionally a political committee." *Human Life of Wash. Inc. v. Brumsickle,* 624 F.3d 990, 1009-10 (9th Cir. 2010) (internal citation omitted). Indeed, "*Buckley* ... only defined the outer limits of permissible political committee regulation" and "left room for legislative judgment within these limits, so long as the resulting regulation does not prohibit a substantial amount of non-electoral speech." *See Leake,* 525 F.3d at 327 (Michael, J., dissenting).

Because *Buckley* simply does not categorically "prohibit[ ] the government from designating a group as a 'political committee' unless the group's sole, primary purpose is political advocacy," it also does not categorically prohibit Iowa from subjecting entities to disclosure requirements simply because those requirements may be characterized as "PAC-style regulations."[14] *See Brumsickle,* 624 F.3d at 1008-09; Pl.'s Br. at 11. Therefore, the Court concludes that the challenged provisions are not rendered unconstitutional by the "major purpose" language in *Buckley*.

b. *Specific Arguments.*

In addition to its generalized arguments, IRTL makes particularized arguments against the provisions challenged in Count 2. *See* Pl.'s Br. at 7-12. At the hearing, IRTL's counsel summarized its main complaints as follows:

> Iowa has chosen not to use that federal model that it clearly knows about and goes above and beyond and requires more. It requires you to

[14] The Court needs not, and therefore does not, decide whether IRTL's "PAC-style" label is appropriate—i.e., whether the challenged provisions are, in fact, comparable to the federal political committee regulations that were at issue in *Buckley*.

> register before you speak. That's onerous. It requires you to continue reporting even when you don't speak. It requires you to terminate and essentially say you are not going to speak anymore. And then you would have to file another registration if you change your mind. These are onerous burdens.

Hr'g Tr. 49:5-11.

As discussed above, these provisions are subject to exacting scrutiny. *See Citizens United,* 130 S.Ct. at 914. This standard "requires a 'substantial relation' between the disclosure requirement and a 'sufficiently important' governmental interest." *Id.* The Court will address IRTL's specific contentions in turn.

i. Initial filing requirements.

IRTL first objects to the initial filing requirements contained in Iowa Code §§ 68A.404(4)(a), 68A.404(3)(a), and Form Ind–Exp–O. *See* Pl.'s Br. at 7, 9 & n. 3.

As an initial matter, IRTL's counsel repeatedly insisted at the hearing that Iowa requires corporations to register before they speak. Hr'g Tr. 12:12-13, 49:5-7; *see also id.* at 19:24–25. However, the statute contains no such requirement. Section 68A.404(3)(a) provides that "[a]n initial report shall be filed at the same time as the independent expenditure statement." Section 68A.404 (4)(a) further provides:

> 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 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.

Although the statute requires both an "independent expenditure statement" and an "initial report," the Board allows independent expenditure committees to file a single form, Form Ind–Exp–O, to satisfy both requirements. *See* Smithson Aff. ¶ 8 (citing Iowa Admin. Code r. 351–4.27(2)); Pl.'s Br. at 7 n. 3.

For the purposes of § 68A.404, "an independent expenditure is made at the time that the cost is incurred." Iowa Code § 68A.404(4)(c). Therefore, it is possible that a corporation would have to make its initial filing before it actually disseminates its speech to the public. *See* Iowa Code § 68A.404(4)(a). However, the fact that this possibility exists is very different from a blanket requirement that corporations "register before they speak." *See* Hr'g Tr. 49:7.

In its brief, IRTL argues that §§ 68A.404(3)(a) and 68A.404(4)(a) are unconstitutionally burdensome because an independent***1039** expenditure committee must make its initial filing within 48 hours of making an independent expenditure. *See* Pl.'s Br. at 9. According to IRTL, the state has "no justification" for requiring independent expenditure committees to file so quickly. *See id.* at 10-11. Defendants argue that the state has an important interest in letting the public know "who is speaking about a candidate shortly before an election." *See* Defs.' Br. at 8 (quoting *Citizens United,* 130 S.Ct. at 915-16); *see also id.* at 10 (arguing that the 48-hour filing requirement is substantially related to this interest). The Court agrees that this is

a sufficiently important government interest. *See Citizens United,* 130 S.Ct. at 915-16. The Court also finds that the 48-hour reporting requirement is substantially related to this important government interest. Requiring prompt disclosures, especially close to an election, helps to assure that they are made "in time to provide relevant information to voters." *See McConnell,* 540 U.S. at 200; *see also Citizens United,* 130 S.Ct. at 916 (praising the benefits of "prompt disclosures"). And, contrary to IRTL's assertions, the Court does not find the 48-hour reporting requirement to be an "onerous" burden. *See* Hr'g Tr. 49:5-11. Therefore, Iowa's initial filing requirements pass exacting scrutiny.

Because these provisions pass exacting scrutiny, the Court concludes that IRTL is unlikely to succeed on the merits of its claims against the initial filing requirements contained in Iowa Code §§ 68A.404(4)(a), 68A.404(3)(a) and Form Ind–Exp–O.

ii. Subsequent reporting requirements.

IRTL argues that Iowa's subsequent reporting requirements for independent expenditure committees, as contained in Iowa Code §§ 68A.404(3)(a), 68A.404 (3)(a)(1), and Iowa Administrative Code rule 351–4.9(15), are unconstitutionally burdensome. *See* Pl.'s Br. at 7-8, 8 n.6. First, IRTL objects to the fact that § 68A. 404(3)(a) and rule 351–4.9(15) require periodic disclosures instead of "event-driven" disclosures. *See* Pl.'s Br. at 9. Both the statute and the rule require independent expenditure committees to file reports "according to the same schedule as the office or election to which the independent expenditure was directed." Iowa Code § 68A. 404(3)(a); Iowa Admin. Code r. 351–4.9(15). Defendants argue that this periodic reporting requirement serves the state's informational interest,

allowing Iowa to help its citizens "make informed choices in the political marketplace." Defs.' Br. at 11-12 (quoting *Citizens United,* 130 S.Ct. at 914). The Court agrees, and finds that the periodic reporting requirement is substantially related to this important informational interest. *See Citizens United,* 130 S.Ct. at 915-16; *see also Speechnow.org,* 599 F.3d at 696 (noting that "[t]he Supreme Court has consistently upheld organizational and reporting requirements against facial challenges," based on this informational interest); *Minn. Citizens Concerned for Life v. Swanson,* No. 10-2938, 741 F.Supp.2d 1115, 1130-31, 2010 WL 3768041, at *11 (D. Minn. Sept. 20, 2010) (slip copy) (upholding periodic reporting requirements). Iowa "is entitled to conclude that its electorate needs to know, on an ongoing basis, the source of financial support for those who are taking positions" in support of a candidate for state office. *Cf. Nat'l Org. For Marriage v. McKee,* 666 F.Supp.2d 193, 208 (D. Me. 2009) (upholding reporting requirements in the context of ballot-initiative advocacy). Therefore, the periodic reporting requirements pass exacting scrutiny.

Second, IRTL objects to the fact that Iowa "requir[es] supplemental reports from groups simply *raising* over $1,000 in contributions earmarked for making independent***1040** expenditures." Pl.'s Br. at 9 (citing Iowa Code § 404(3)(a)(1)); *see also* Hr'g Tr. 49:8 ("It requires you to continue reporting even when you don't speak."). Section 404(3)(a)(1) states, in relevant part, that an independent expenditure committee must file supplemental reports "if the person making the independent expenditure either raises or expends more than one thousand dollars." Iowa Code § 404(3)(a)(1). IRTL refers to money raised under this provision as "earmarked contributions." *See* Pl's Br. at 11. As dis-

cussed above, Defendants have asserted an important government interest in providing the electorate with information about campaign-related spending. *See* Defs.' Br. at 11-12. Earmarked contributions, like independent expenditures, constitute "spending that is unambiguously related to the campaign of a particular ... candidate." *Buckley,* 424 U.S. at 80. The Court concludes that Iowa's requirements that these contributions be reported is substantially related to the government's important informational interest because it can help "shed the light of publicity on spending that is unambiguously campaign related." *See id.* at 81. Therefore, the supplemental reporting requirement also passes exacting scrutiny.

Because both of these requirements pass exacting scrutiny, the Court concludes that IRTL is unlikely to succeed on the merits of its claims against the periodic and supplemental requirements contained in Iowa Code §§ 68A.404(3)(a), 68A.404(3)(a)(1) and Iowa Administrative Code rule 351–4.9(15).

iii. Termination notice.

IRTL argues that Iowa requires independent expenditure committees to formally dissolve in a manner that "effectively requires the entity to cease to exist." Pl.'s Br. at 10; *see also* Hr'g Tr. 11:19-20. IRTL also argues that an independent expenditure committee may not terminate its status as such without the Board's approval. Pl.'s Br. at 10-11; Hr'g Tr. 11:21-23. According to IRTL, these requirements are unconstitutionally burdensome and are imposed on independent expenditure committees by Iowa Code § 68A.402B(3), Iowa Administrative Code rule 351–4.9(15), and Form DR–3. *See* Pl.'s Br. at 8, 10-11 & n. 6; *see also* Mot. at 1 (challenging these provisions). However, none of these three challenged provisions actually impose such

requirements on independent expenditure committees.

First, there is simply no requirement in § 68. 402B(3) that "effectively requires [a covered] entity to cease to exist." Pl.'s Br. at 10; *see also* Mot. at 1 (challenging only subsection (3) of § 68A.402B). Section 68A. 402B provides, in its entirety, that:

> 1. If a committee, after having filed a statement of organization or one or more disclosure reports, dissolves or determines that it will no longer receive contributions or make disbursements, the committee shall notify the board within thirty days following such dissolution or determination by filing a dissolution report on forms prescribed by the board.
>
> 2. A committee shall not dissolve until all loans, debts, and obligations are paid, forgiven, or transferred and the remaining moneys in the committee's account are distributed according to sections 68A.302 and 68A.303. If a loan is transferred or forgiven, the amount of the transferred or forgiven loan must be reported as an in-kind contribution and deducted from the loans payable balance on the disclosure form. If, upon review of a committee's statement of dissolution and final report, the board determines that the requirements for dissolution have been satisfied, the dissolution shall ***1041** be certified and the committee relieved of further filing requirements.
>
> 3. 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.

Thus, the statute clearly distinguishes between requirements for committees (including political committees) and independent expenditure committees. Section 68A.402B requires both committees and independent expenditure committees to notify the Board if they determine that they will no longer participate in covered election-related activities. *See* Iowa Code §§ 68A. 402B(1), (3). However, the required reports are not the same. Committees (which, as noted above, include political committees) must file a "dissolution report," while "a person who files an independent expenditure statement and a disclosure report, pursuant to section 68A.404" (i.e., an independent expenditure committee) must file a "termination report." *Compare* Iowa Code § 68A.402B(1) *with* Iowa Code § 68A. 402B(3). Additionally, the statute indicates that committees must formally dissolve and seek Board approval before their reporting requirements are extinguished. Iowa Code § 68A.402B(2). But there is no such requirement for independent expenditure committees. *See* Iowa Code § 68A.402B. Therefore, § 68A.402B simply does not require independent expenditure committees to formally dissolve or obtain Board approval before their reporting requirements are extinguished.[15]

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[15] It appears that IRTL may be basing its argument on its contention that independent expenditure committees may simultaneously be regulated as committees, including political committees. *See* Compl. at 15 n. 13; *see also* Clerk's No. 19. IRTL argues that "if IRTL makes independent expenditures aggregating over $750 in a calendar year, it becomes not only an independent expenditure committee but

Second, IRTL points to the use of the term "notice of dissolution" in Iowa Administrative Code rule 351–4.9(15). *See* Pl.'s Br. at 8 n. 6 (citing that rule in support of its dissolution requirements). The rule states, in relevant part, that an independent expenditure committee must "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)* ...." Iowa Admin. Code r. 351–4.9(15) (emphasis added). Although this rule uses the term "dissolution," the same term used in §§ 68A.402B (1)-(2), it clearly incorporates only the requirements of § 68A.402B. *Id.* Because § 68A.402B does not contain any financial dissolution or Board-approval requirements, neither does rule 351–4.9(15). ***1042**

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also a committee and a political committee...." Pl.'s Br. at 6; *see also* Compl. ¶ 18; Hr'g Tr. 8:23-25. In other words, as IRTL reads the statute, IRTL can simultaneously qualify—and therefore be simultaneously regulated—as a "political committee" (which also makes it a "committee") and as an "independent expenditure committee." *See* Pl.'s Br. at 6. However, IRTL's simultaneous-coverage argument is contradicted by the plain text of the statute. *See, e.g.,* Iowa Code §§ 68A.402B, 68A.404(3)-(3)(b) (expressly distinguishing between independent expenditure committees and committees, including political committees). Additionally, the Board has plainly stated that "[a]n 'independent expenditure committee' will not be subject to the same registration and reporting requirements as a PAC." Advisory Op. 2010-03 (Clerk's No. 20-1 at 13). Accordingly, there is no credible threat that IRTL will be subjected to the simultaneous coverage it claims to fear. Therefore, the Court rejects IRTL's simultaneous-coverage contention and all of its arguments based, explicitly or implicitly, upon this flawed premise.

Third, IRTL argues that Form DR–3 requires independent expenditure committees to essentially "cease to exist." *See* Compl. at 15, n. 13; *see also* Clerk's No. 19. However, DR–3 imposes no such requirements on independent expenditure committees. Form DR–3 states that:

> A committee may end its filing obligation by filing a Notice of Dissolution when it has
>
> 1. Paid or transferred all of its debts or obligations.
>
> 2. Reduced its cash balance to zero.
>
> 3. If a candidate's committee, sold or transferred its campaign property.
>
> 4. Filed a final report showing these transactions.

Form DR–3 (Clerk's No. 1-2). However, Form DR–3 imposes no such requirements on independent expenditure committees.[16] *See id.* Moreover, IRTL has not pointed to any evidence that the Board, in practice, requires independent expenditure committees to "cease to exist" before they file a termination report. *See* Pl.'s Br. at 10.

Because IRTL purports to challenge requirements that simply do not exist in Iowa Code § 68A.402B(3), Iowa Administrative Code rule 351–4.9(15), and Form DR–3, the Court concludes that IRTL is unlikely to succeed on the merits of its termination-related claims against these provisions.

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[16] There may be some confusion due to the fact that the Board uses Form DR–3 for both dissolution reports and termination reports. *See* Iowa Admin. Code r. 351–4.55.

3. *Iowa's ban on corporate contributions.*

IRTL alleges that Iowa Code § 68.503, which bans corporate campaign contributions, is unconstitutional, both facially and as applied to IRTL. Compl. ¶ 19. IRTL argues that this provision violates both the First and Fourteenth Amendments. Pl.'s Br. at 13, 22. The Court will consider each of these contentions in turn.

a. *First Amendment.*

i. Level of scrutiny.

As an initial matter, IRTL argues that § 68A.503 is subject to strict scrutiny. Pl.'s Br. at 13. IRTL concedes that "[s]ince *Buckley,* courts have subjected contribution limits to less demanding review." *Id.* at 14. However, IRTL argues strict scrutiny should apply in this case because: (1) Iowa bans contributions, instead of limiting them; (2) the ban "impermissibly singles out certain speakers, e.g. corporations and banks"; and (3) the ban is "a content-based regulation." *Id.* at 14 n. 2, 15, 18-19. The Court does not agree.

IRTL's first two arguments have already been rejected by the Supreme Court. *See Fed. Election Comm'n v. Beaumont,* 539 U.S. 146, 162 (2003) ("It is not that the difference between a ban and a limit is to be ignored; it is just that the time to consider it is when applying scrutiny at the level selected, not in selecting the standard of review itself."); *id.* at 161 (rejecting the argument "that application of the ban on its contributions should be subject to a strict level of scrutiny, on the ground that § 441b does not merely limit contributions, but bans them on the basis of their source"). Therefore, this Court must reject these arguments as well.[17] *See id.* at 161-62; *see also Green Party of Conn.*

[17] Additionally, contrary to IRTL's suggestion, there is no indication that § 68A.503 is "simply a means to control

v. Garfield, ***1043** 616 F.3d 189, 199 (2d Cir. 2010) ("[W]e reject plaintiffs' argument that we must apply strict scrutiny because the provisions at issue here are *bans,* as opposed to mere *limits*.").

IRTL also argues that strict scrutiny applies because § 68A.503 is a content-based restriction on speech. Pl.'s Br. at 18. "As a general rule, laws that by their terms distinguish favored speech from disfavored speech on the basis of the ideas or views expressed are content based." *Bartnicki v. Vopper,* 532 U.S. 514, 526 (2001) (quoting *Turner Broad. Sys., Inc. v. Fed. Commc'ns Comm'n,* 512 U.S. 622, 642-43 (1994)). "In determining whether a regulation is content based or content neutral, we look to the purpose behind the regulation; typically, government regulation of expressive activity is content neutral so long as it is justified without reference to the content of the regulated speech." *Id.* (quoting *Ward v. Rock Against Racism,* 491 U.S. 781, 791 (1989)) (internal quotation marks omitted); *see also Fraternal Order of Police, N.D. State Lodge v. Stenehjem,* 431 F.3d 591, 596 (8th Cir.2005) ("The principal inquiry in determining content neutrality is whether the government has adopted a regulation of speech because of disagreement with the message the speech conveys."). This is true "even if [the regulation] has an incidental effect on some speakers or messages but not others." *See Ward,* 491 U.S. at 791.

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content." *See* Pl.'s Br. at 19 (quoting *Citizens United,* 130 S. Ct. at 899). IRTL has "made no showing that corporations share a monolithic ideology or specific viewpoint that it being targeted." *See Swanson,* 741 F.Supp.2d at 1134 n. 16, 2010 WL 3768041, at *15 n. 16; *see also Citizens United,* 130 S.Ct. at 912 ("Corporations, like individuals, do not have monolithic views.").

In this case, there is no indication in the record that Iowa enacted § 68A.503 because it disagrees with the message conveyed by contributions.[18] To the contrary, it appears that the Iowa Legislature was not targeting the expressive content of corporate contributions, but rather was concerned about "the effect of the act of communicating" in that manner. *Cf. Missouri ex rel. Nixon v. Am. Blast Fax, Inc.,* 323 F.3d 649, 659-60 (8th Cir. 2003) (distinguishing a law banning unsolicited facsimile ads from content-based restrictions because "[t]he harm associated with unsolicited fax advertisements is ... not related to the content of the messages"). Indeed, bans on direct contributions have long been used to "prevent corruption or the appearance of corruption." *Beaumont,* 539 U.S. at 154; *see also Speechnow.org,* 599 F.3d at 695 ("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,* 130 S.Ct. at 909). Because § 68A.503 serves a purpose

[18] IRTL's arguments as to "content" misapprehend the expressive nature of contributions. Political contributions implicate First Amendment concerns because "[a] contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support." *Buckley,* 424 U.S. at 21, 96 S.Ct. 612. IRTL argues that § 68A.503 is content-based because it applies to political contributions and not to charitable, educational, or religious contributions. Pl.'s Br. at 18. But, whether the recipient of a contribution is a candidate, a charity, a school, or a church, the message expressed—"I support you"—is exactly the same. Therefore, the expression regulated under § 68A.503 simply is not determined by the message conveyed. *See Bartnicki,* 532 U.S. at 526, 121 S.Ct. 1753.

unrelated to the content of the expression—namely, preventing corruption or the appearance—it is a content-neutral regulation.[19] *See Fraternal Order of Police,* 431 F.3d at 596. ***1044**

The Supreme Court has "consistently held that restrictions on contributions require less compelling justification than restrictions on independent spending." *Fed. Election Comm'n v. Mass. Citizens for Life,* 479 U.S. 238, 259-60 (1986). A lower standard of scrutiny is appropriate because "[b]y contrast with a limitation upon expenditures for political expression, a limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage in free communication." *Buckley,* 424 U.S. at 20. Likewise, even if contribution limits "involv[e] significant interference with associational rights," those limits are still subject to a lesser standard of scrutiny known as "closely drawn scrutiny." *Beaumont,* 539 U.S. at 161. Nothing in *Citizens United* purported to change this standard—indeed, the Court specifically noted that it was not reconsidering "whether contribution limits should be subjected to rigorous First Amendment scrutiny." 130 S.Ct. at 909. Therefore, the Court will review § 68A.503 under the standard of closely drawn scrutiny.

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[19] IRTL's reliance on *Iowa Right to Life Committee* and Day is misplaced. *See* Pl.'s Br. at 18 n. 14 (citing *Iowa Right to Life Comm., Inc. v. Williams,* 187 F.3d 963, 967-68 (8th Cir. 1999); *Day v. Holahan,* 34 F.3d 1356, 1361 (8th Cir. 1994)). In both cases, the Eighth Circuit determined that the challenged provision distinguished disfavored speech on the basis of its content. *See Iowa Right to Life,* 187 F.3d at 967; *Day,* 34 F.3d at 1360-61.

ii. Application of closely-drawn scrutiny.

Under closely-drawn scrutiny, the Iowa contribution ban must be "closely drawn to match a sufficiently important interest." *Beaumont,* 539 U.S. at 161, 123 S. Ct. 2200 (internal quotation marks omitted). This is a "relatively complaisant review." *Id.* A contribution limit fails this standard if it prevents candidates "from amassing the resources necessary for effective campaign advocacy." *Randall v. Sorrell,* 548 U.S. 230, 248 (2006) (quoting *Buckley,* 424 U.S. at 21). "Where there is strong indication in a particular case, i.e., danger signs, that such risks exist, courts must review the record independently and carefully to assess the statute's tailoring." *Thalheimer v. City of San Diego,* 706 F. Supp. 2d 1065, 1073 (S.D. Cal. 2010) (quoting *Randall,* 548 U.S. at 249) (internal quotation marks omitted).In this case, Defendants argue that the government has compelling interests in preventing corruption or the appearance of corruption. *See* Smithson Aff. ¶ 15 ("The state has a compelling interest in protecting the public trust in the conduct and fairness of the election of state officers, and the ban on corporate contributions serves that interest by protecting against corruption or the appearance of corruption...."). The Court agrees. *See First Nat'l Bank of Boston v. Bellotti,* 435 U.S. 765, 788 n. 26 (1978) ("The importance of the governmental interest in preventing [corruption] has never been doubted."); *see also Beaumont,* 539 U.S. at 154 (noting that the federal ban on corporate contributions "was and is intended to prevent corruption or the appearance of corruption") (quoting *Fed. Election Comm'n v. Nat'l Conservative Political Action Comm.,* 470 U.S. 480, 496-497 (1985) (internal quotation marks omitted)).
"Whether the limit is unconstitutionally low because it prevents candidates from amassing the resources nec-

essary for effective campaign advocacy is a fact intensive inquiry." *Thalheimer,* 706 F.Supp.2d at 1073. However, IRTL has provided this Court with few facts in support of its challenge. IRTL argues that § 68A.503 is not closely drawn because it applies to ***1045** small contributions as well as large ones. *See* Pl.'s Br. at 20-21. However, IRTL has failed to provide any evidence § 68A.503 has had any adverse effect on the ability of Iowa candidates to run effective campaigns. *See Randall,* 548 U.S. at 248. Indeed, IRTL has failed to even point to any "danger signs" that such risk exists. *See Thalheimer,* 706 F.Supp.2d at 1074. And, contrary to IRTL's contentions, the fact that § 68A.503 "is not merely a limit on contributions, but an outright ban" does not, standing alone, make § 68A.503 unconstitutional. *See* Pl.'s Br. at 21. The Supreme Court specifically upheld a federal ban on corporate contributions in *Beaumont.*[20] 539 U.S. at 149. And, in *Citizens United,*

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[20] IRTL argues that "*Beaumont* was wrongly decided and should be reconsidered in light of *Citizens*." Pl.'s Br. at 13. As an initial matter, *Beaumont* is still good law that is binding on this Court. *See Green Party of Conn.,* 616 F.3d at 199 ("*Beaumont* and other cases applying the closely drawn standard to contribution limits remain good law."); *Swanson,* 741 F.Supp.2d at 1133, 2010 WL 3768041, at *14 ("The Court concludes that *Citizens United* neither explicitly nor implicitly overruled *Beaumont.*"). But even if *Citizens United* had called *Beaumont* into doubt, the Court would still reject IRTL's arguments for at least two reasons.

First, contrary to IRTL's suggestion, the result in *Beaumont* did not depend on the availability of a PAC option. *See* Pl.'s Br. at 12-13. Rather, the Supreme Court stated that its decision was based on the differences between independent expenditures and contributions. *See Beaumont,* 539 U.S. at 159 ("[A]lthough we have never squarely held against

the Supreme Court noted, without any hint of disapproval, that some states have banned direct corporate contributions "[a]t least since the latter part of the 19th century." 130 S.Ct. at 900.

Additionally, § 68A.503 is not, as IRTL argues, "an

NCRL's position here, we could not hold for it without recasting our understanding of the risks of harm posed by corporate political contributions, of the expressive significance of contributions, and of the consequent deference owed to legislative judgments on what to do about them.").

Second, IRTL is simply wrong when it argues that *Beaumont*'s reasoning has been "discredited" by *Citizens United. See* Pl.'s Br. at 13. IRTL argues that "*Beaumont* found three state interests supporting the ban: an antidistortion interest, a shareholder-protection interest, and an anticircumvention interest. *Citizens* rejected all three." *Id.* at 12. This is a mischaracterization of *Beaumont.* In *Beaumont,* the Supreme Court stated that the ban's major purpose was to prevent corruption or the appearance of corruption. *Beaumont,* 539 U.S. at 154 ("[T]he ban was and is intended to prevent corruption or the appearance of corruption.") (internal quotation marks omitted). The Supreme Court did discuss the three interests listed by IRTL as *additional* interests served by the ban, but it never suggested that the government's interest in preventing corruption was not itself sufficient to support the ban. *See id.* at 154-59. And, importantly, *Citizens United* dealt with independent expenditures, not contributions. *See Citizens United,* 130 S.Ct. at 909. In arguing that *Beaumont*'s reasoning is "discredited," IRTL is really arguing that a rationale utilized "to declare prohibitions on independent expenditures unconstitutional as applied to [corporations] is equally applicable in the context of direct contributions"—a proposition the Supreme Court has already rejected. *See Beaumont,* 539 U.S. at 151 (quoting *Beaumont v. Fed. Election Comm'n,* 278 F.3d 261, 275 (4th Cir. 2002)).

outright ban on corporate political speech" or "a prohibition on political association." Pl.'s Br. at 21, 15. Section 68A.503 "does not prevent [IRTL] from expressing support in other ways such as making independent expenditures, volunteering services to a campaign, or endorsing a candidate." *See Minn. Citizens Concerned for Life, Inc. v. Kelley,* 427 F.3d 1106, 1115 (8th Cir. 2005); *see also* Iowa Code § 68A.404 (setting no cap on independent expenditures). Nor does it prevent IRTL from associating with its favored ***1046** candidate in other ways. Indeed, "[a] ban on direct corporate contributions leaves individual members of corporations free to make their own contributions, and deprives the public of little or no material information." *Beaumont,* 539 U.S. at 162 n. 8.

For all of these reasons, IRTL has failed to show that it is likely to succeed on the merits of its First Amendment claims against § 68A.503.

b. *Fourteenth Amendment.*

IRTL also argues that § 68A.503 violates its rights under the Fourteenth Amendment because: (1) it is a content-based restriction; and (2) it treats corporations differently than other associations, such as labor unions. Pl.'s Br. at 22–23. IRTL's first argument fails at the outset because, as discussed above, § 68A.503 is not a content-based restriction. IRTL's second argument fails because IRTL has not made the requisite threshold showing.

In order to prevail on its equal protection claim, IRTL must show that it is "similarly situated to those who allegedly receive favorable treatment." *Arnold v. City of Columbia,* 197 F.3d 1217, 1220 (8th Cir. 1999). IRTL avers that "corporations and other organized associations are similarly situated." Pl.'s Br. at 23; *see*

also Compl. ¶ 42 (suggesting that "labor unions, LLCs, and general partnerships" are similarly situated to corporations). However, IRTL does not identify any relevant similarities or provide any evidence at all to support this generalized assertion.[21] *See* Pl.'s Br. at 23. IRTL's bare, conclusory statement is not sufficient to carry its burden.[22] *Cf. Nolan v. Thompson,* 521 F.3d 983, 990 (8th Cir. 2008) (affirming dismissal of an equal-protection claim where the record lacked sufficient evidence "to enable a meaningful comparison between [the plaintiff] and those he claims are similarly situated"). Furthermore, other courts have recognized that "differences in organizational structure allow [the legislature] to shape the election laws to reflect those differences." *See Int'l Ass'n of Machinists & Aerospace Workers v. Fed. Election Comm'n,* 678 F.2d 1092, 1108 (D.C. Cir. 1982); *see also Bread Political Action Comm. v. Fed. Election Comm'n,* 635 F.2d 621, 630 (7th Cir. 1980) (en banc) ("[T]he somewhat dissimilar treatment

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[21] Instead, IRTL merely cites to a single opinion by the Colorado Supreme Court. Pl.'s Br. at 23 (citing *Dallman v. Ritter,* 225 P.3d 610, 634-35 (Colo. 2010)). However, *Dallman* is neither binding authority nor persuasive in its reasoning. *See Dallman,* 225 P.3d at 634-35 (stating, in a conclusory fashion, that unions and corporations are "similarly situated" in the context of "preventing corruption in contracting").

[22] The Court notes that while IRTL makes much of the fact that its complaint is verified (Hr'g Tr. 17:3-6), neither IRTL's complaint nor its verification page (Compl. at 25) establish that its Executive Director, who verified the Complaint, is competent to testify as to any factual similarities between corporations and unions or other "organized associations." *See generally* Fed. R. Evid. 602.

of corporations, labor organizations, membership organizations and trade associations under [federal election law] follows from the rather obvious facts that each of the different groups has a different structure and a different kind of constituency and that each requires somewhat different regulations to curb abuses the Act was intended to halt."), *rev'd on other grounds,* 455 U.S. 577 (1982). The Supreme Court has also recognized that there may be "crucial differences" between corporations and unions which can justify differing regulations. *See Austin,* 494 U.S. at 666, *overruled in part on other grounds by Citizens United,* 130 S.Ct. at 876; *see also Swanson,* 741 F.Supp.2d at 1133-34, 2010 WL 3768041, at *14 ("While *Citizens United* ***1047** overturned *Austin* insofar as *Austin* held that speech could be banned based on the speaker's corporate identity, the Supreme Court in *Citizens United* did not address, and therefore did not overrule, the portion of the *Austin* decision that addressed the equal protection clause."). Because IRTL has failed to show that it is similarly situated to other entities not subject to § 68A.503, the Court concludes that IRTL is not likely to succeed on the merits of its equal-protection challenge to this section.

4. *Iowa's requirements of board (or equivalent) approval.*

IRTL argues that Iowa Code §§ 68A.404(2)(a)-(b), 68A.404(5)(g), and Form Ind–Exp–O "unconstitutionally burden[ ] 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." Compl. ¶ 52. Section 68A.404(a) provides that:

a. An entity, other than an individual or indi-

> viduals, 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, executive council, or similar organizational leadership body 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.

This section, on its face, does not discriminate between corporations and the other entities identified by IRTL. *See id.;* Compl. ¶ 52. IRTL argues, however, that this section really only targets corporations because, among other things, § 68A.404(5)(g) and Form Ind–Exp–O refer only to corporations. *See* Pl.'s Br. at 26-27. Section § 68A.404(5)(g) provides that:

> 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 affirma-

tive action within the calendar year when the independent expenditure was incurred.

Form Ind–Exp–O includes a "Statement of Certification" that states, in relevant part, that "[i]f this expenditure was made by a corporation that the board of directors, executive council, or similar organizational leadership body expressly authorized the expenditure by resolution or other affirmative action this year." *See* Form Ind–Exp–O.

However, even if this requirement only applies to corporations, IRTL offers nothing more than a bare assertion that corporations are "similarly situated" to "labor unions and other entities, such as LLCs and general partnerships." Compl. ¶ 52. For all of the reasons discussed above in Section A(3)(b), the Court finds that such naked allegations are insufficient to carry IRTL's threshold burden. Therefore, IRTL is unlikely to succeed on the merits of its disparate treatment claim.[23] ***1048**

B. *Other* Dataphase *Factors*

Because IRTL has not made a threshold showing that it is likely to succeed on the merits of its claims, the Court is not required to consider the remaining *Dataphase* factors. *Rounds,* 530 F.3d at 732. However,

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[23] IRTL also argues that this requirement is unconstitutional as applied to IRTL because it has "no shareholders to protect," and is "an ideological corporation and its donors are fully aware of its political purposes, and in fact contribute precisely because they support these purposes." Pl.'s Br. at 28 (internal quotation marks omitted). However, IRTL has presented no evidence supporting this allegation, because IRTL has not established that its Executive Director, who verified the Complaint, is competent to testify as to the knowledge or intentions of IRTL's donors. *See* Compl. at 25.

the Court finds IRTL has also failed to show that it will suffer irreparable harm if a preliminary injunction is not issued, that the balance of harms favors IRTL, or that the public interest would be served by granting an injunction.

1. *Irreparable harm.*

"The basis of injunctive relief in the federal courts has always been irreparable harm and inadequacy of legal remedies." *Adam-Mellang v. Apartment Search, Inc.,* 96 F.3d 297, 299 (8th Cir. 1996) (quoting *Beacon Theatres, Inc. v. Westover,* 359 U.S. 500, 506-07 (1959)). Therefore, "a party moving for a preliminary injunction is required to show the threat of irreparable harm." *Baker Elec. Co-op., Inc. v. Chaske,* 28 F.3d 1466, 1472 (8th Cir. 1994) (citing *Modern Computer Sys.,* 871 F.2d at 738; *Dataphase,* 640 F.2d at 114). A "failure to demonstrate irreparable harm is a sufficient ground to deny a preliminary injunction...." *Gen. Motors Corp. v. Harry Brown's, LLC,* 563 F.3d 312, 320 (8th Cir. 2009). IRTL's only argument on this factor is that it is entitled to a presumption of irreparable harm because it has demonstrated that its rights have been violated. *See* Pl.'s Br. at 30. However, IRTL has not made such a demonstration. Therefore, it is not entitled to any such presumption and has failed to show that it will suffer irreparable harm absent an injunction.

2. *Balance of harms.*

The balance of harms must "tip decidedly and clearly in [IRTL's] favor" to justify issuing a preliminary injunction. *See Lynch Corp. v. Omaha Nat'l Bank,* 666 F.2d 1208, 1212 (8th Cir. 1981). IRTL argues that it "has demonstrated that the challenged provisions unconstitutionally infringe on its speech, association, and equal protection rights" and that the Defendants

have no interest in "enforcing a law that is likely unconstitutional." Pl.'s Br. at 30-31. But, for all the reasons discussed above, IRTL has not demonstrated either that the challenged provisions violate IRTL's rights or that the challenged provisions are likely unconstitutional. Furthermore, Defendants have a valid interest in facilitating transparency in Iowa elections. *See Citizens United,* 130 S.Ct. at 916. This interest would be impaired if the Court granted IRTL's requested relief.[24] And, especially in light of the weakness of ***1049** IRTL's case on the merits, the Court agrees with Defendants that changing the rules for the general election at the eleventh hour "would work an injustice on the electorate and candidates." *See* Defs.' Br. at 18. Therefore, the balance of harms favors Defendants, not IRTL.

3. *Public interest.*

Even if IRTL had shown that it was likely to succeed on the merits, IRTL has failed to show that the public interest weighs in favor of granting a preliminary injunction. Once again, IRTL makes no argument

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[24] IRTL argues that "[i]f the provisions challenged [in Count 2] are held unconstitutional, Iowa will retain an independent-expenditure disclosure scheme similar to the federal scheme of event-driven reports." Pl.'s Br. at 12 n. 10. However, this assertion is contrary to the broad relief IRTL has requested. IRTL has, *inter alia,* asked this Court to enjoin Iowa Code § 68A.404(3) in its entirety. Mot. at 1. That section requires that organizations disclose their independent expenditures. Iowa Code § 68A.404(3). IRTL has failed to explain how an independent expenditure disclosure scheme could function without requiring that independent expenditures be disclosed. *See* Pl.'s Br. at 12 n. 10; *see also* Pl.'s Resp. to Notice of Additional Authority at 1-2 (Clerk's No. 30).

on this factor beyond its own assertion that it will succeed on the merits. Pl.'s Br. at 31. Because IRTL is not likely to succeed on the merits, IRTL has failed to show that the public interest would be served by granting a preliminary injunction. Furthermore, "the public has an interest in knowing who is speaking about a candidate shortly before an election," an interest which would be impaired—not served—by the broad relief requested by IRTL. *See Citizens United,* 130 S.Ct. at 915; *see also Swanson,* 741 F.Supp.2d at 1134-35, 2010 WL 3768041, at *15. Therefore, the Court finds that the public interest weighs against the granting of a preliminary injunction.

III. CONCLUSION

IRTL has asked this Court to enjoin the enforcement of a duly-enacted statute and radically change Iowa's campaign finance rules mid-stream during an election. IRTL has failed to meet the burden required to obtain this extraordinary relief. After considering all of the *Dataphase* factors, the Court concludes that the balance of the equities do not support a preliminary injunction. Specifically, the Court finds that IRTL has failed to make the required threshold showing that it is likely to succeed on the merits of its claims. But even if it had made such a showing, IRTL would not be entitled to a preliminary injunction because it has failed to show that it will suffer irreparable harm if the preliminary injunction is not issued. Additionally, IRTL has failed to show that the balance of harms weighs in favor of issuing a preliminary injunction or that the public interest weighs in favor of issuing a preliminary injunction. Therefore, IRTL's motion for a preliminary injunction (Clerk's No. 2), is DENIED.

IT IS SO ORDERED.

Dated this 20th day of October, 2010.

/s/ Robert W. Pratt
ROBERT W. PRATT, Chief Judge
U.S. DISTRICT COURT

[Filed: 6/29/2011; Doc. 53]

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

IOWA RIGHT TO LIFE COMMITTEE, INC., Plaintiff, v. MEGAN TOOKER,[1] in her 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, Defendants, Defendants.	4:10-cv-416 RP-TJS MEMORANDUM OPINION AND ORDER

Currently before the Court are two motions for summary judgment. The first motion was filed by Iowa Right to Life Committee, Inc. ("IRTL") on January 14, 2011. Clerk's No. 44. The above-captioned government officials (collectively, "Defendants") filed a response on February 4, 2011. Clerk's No. 47. IRTL filed a reply on February 11, 2011. Clerk's No. 50. IRTL also filed two

[1] Megan Tooker has been substituted as a party in this case for W. Charles Smithson, pursuant to Federal Rule of Civil Procedure 25(d). *See* Clerk's No. 47-1 ¶ 2.

"Notices of Additional Authority" in support of its motion on June 9, 2011. Clerk's Nos. 51, 52. The second motion was filed by Defendants on January 14, 2011. Clerk's No. 45. IRTL filed a response on February 4, 2011. Clerk's No. 48. Defendants filed a reply on February 11, 2011. Clerk's No. 49. The matters are fully submitted.[2]

I. FACTUAL & PROCEDURAL BACKGROUND

The following facts are undisputed, unless otherwise noted. IRTL is an Iowa ***856** nonprofit corporation that is exempt from federal income taxes pursuant to 26 U.S.C. § 501(c)(4). Pl.'s Statement of Undisputed Facts (hereinafter "Pl.'s Facts") ¶¶ 1, 7 (Clerk's No. 44-2); *see also* Defs.' Resp. to Pl.'s Statement of Undisputed Facts (hereinafter "Defs.' Resp. re Facts") ¶ 1, 7 (Clerk's No. 47-1). IRTL is affiliated with the National Right to Life Committee, Inc. and is funded solely by donations. *See* Pl.'s Facts ¶ 6. According to IRTL's mission statement, its "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.' " *Id.* IRTL asserts that "its major purpose is not and will never be the nomination or election of candidates."[3] *Id.* ¶ 7 (citing Compl. ¶ 15).

Defendants are the officers and members of the Iowa Ethics and Campaign Disclosure Board (hereinafter the "Board"). Pl.'s Facts ¶¶ 2-3. Therefore, Defen-

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[2] IRTL has requested oral argument; however, the Court does not believe oral argument will substantially aid it in resolving the motions. Therefore, IRTL's request is denied.

[3] Defendants deny IRTL's assertion regarding its "major purpose." Defs.' Resp. re Facts ¶ 7.

dants "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." *Id.* In January 2010, the United States Supreme Court issued its opinion in *Citizens United v. Federal Election Commission*. *See* 558 U.S. 310 (2010). In April 2010, Iowa revised its election laws and enacted new administrative rules.[4]

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," but, according to IRTL, 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."[5] Pl.'s Facts ¶ 5 (citing Compl. ¶ 13). IRTL also wishes to make campaign contributions to candidates for political office. *See id.* ¶¶ 11-12 (citing Compl. ¶¶ 19-20).

IRTL filed this case on September 7, 2010. *See* Compl. ¶ 3(a)-(d). Along with its complaint, IRTL also filed a motion for a preliminary injunction. Clerk's No. 2. The Court denied that motion on October 20, 2010. Clerk's No. 37 (hereinafter the "PI Order").[6]

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[4] The Court described the relevant history relating to the challenged statutes and rules in its October 20, 2010 order on IRTL's motion for a preliminary injunction. Clerk's No. 37 at 5-9. Therefore, the Court will assume the reader's familiarity with that history.

[5] Defendants dispute that IRTL has, in fact, been chilled. *See* Defs.' Resp. re Facts ¶ 5 (citing Defs.' App. at 40-42 (Bowen Dep. Tr. 28, 32-33, 36-37)).

[6] The PI Order has been published as *Iowa Right to Life*

II. STANDARD FOR SUMMARY JUDGMENT

The term "summary judgment" is something of a misnomer. *See* D. Brock Hornby, *Summary Judgment Without Illusions,* 13 Green Bag 2d 273 (Spring 2010). It "suggests a judicial process that is simple, abbreviated, and inexpensive," while in reality, the process is complicated, time-consuming, and expensive.[7] *Id.* at 273, ***857** 281. The complexity of the process, however, reflects the "complexity of law and life." *Id.* at 281. "Since the constitutional right to jury trial is at stake," judges must engage in a "paper-intensive and often tedious" process to "assiduously avoid deciding disputed facts or inferences" in a quest to determine whether a record contains genuine factual disputes that necessitate a trial. *Id.* at 281–82. Despite the seeming inaptness of the name, and the desire for some in the plaintiffs' bar to be rid of it, the summary judgment process is well-accepted and appears "here to stay."[8] *Id.* at 281.

Committee, Inc. v. Smithson, 750 F.Supp.2d 1020 (S.D. Iowa 2010).

[7] Judge Hornby, a District Court judge for the District of Maine, convincingly suggests that the name "summary judgment" should be changed to "motion for judgment without trial." 13 Green Bag 2d at 284.

[8] Judge Hornby notes that over seventy years of Supreme Court jurisprudence gives no hint that the summary judgment process is unconstitutional under the Seventh Amendment. *Id.* at 281 (citing *Parklane Hosiery Co. v. Shore,* 439 U.S. 322, 336 (1979) and *Sartor v. Arkansas Natural Gas Corp.,* 321 U.S. 620, 627 (1944)). While he recognizes that not much can be done to reduce the complexity of the summary judgment process, he nonetheless makes a strong case for improvements in it, including, amongst other things, improved terminology and expectations and increased pre-summary judgment court involvement. *See id.*

Indeed, "judges are duty-bound to resolve legal disputes, no matter how close the call." *Id.* at 287.

Federal Rule of Civil Procedure 56(a) provides that "[a] party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought." However, "summary judgment is an extreme remedy, and one which is not to be granted unless the movant has established his right to a judgment with such clarity as to leave no room for controversy and that the other party is not entitled to recover under any discernible circumstances." *Robert Johnson Grain Co. v. Chem. Interchange Co.,* 541 F.2d 207, 209 (8th Cir. 1976) (citing *Windsor v. Bethesda Gen. Hosp.,* 523 F.2d 891, 893 n. 5 (8th Cir. 1975)). The purpose of summary judgment is not "to cut litigants off from their right of trial by jury if they really have issues to try." *Poller v. Columbia Broad. Sys., Inc.,* 368 U.S. 464, 467 (1962) (quoting *Sartor v. Ark. Natural Gas Corp.,* 321 U.S. 620, 627 (1944)). Rather, it is designed to avoid "useless, expensive and time-consuming trials where there is actually no genuine, factual issue remaining to be tried." *Anderson v. Viking Pump Div., Houdaille Indus., Inc.,* 545 F.2d 1127, 1129 (8th Cir. 1976) (citing *Lyons v. Bd. of Educ.,* 523 F.2d 340, 347 (8th Cir. 1975)).

Federal Rule of Civil Procedure 56 mandates the entry of summary judgment upon motion after there has been adequate time for discovery. Summary judgment can be entered against a party if that party fails to make a showing sufficient to establish the existence of an element essential to its case, and on which that

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at 283-88.

party will bear the burden of proof at trial. *See Celotex Corp. v. Catrett,* 477 U.S. 317, 322 (1986). Summary judgment is appropriately granted when the record, viewed in the light most favorable to the nonmoving party and giving that party the benefit of all reasonable inferences, shows that there is no genuine issue of material fact, and that the moving party is therefore entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a); *Harlston v. McDonnell Douglas Corp.,* 37 F.3d 379, 382 (8th Cir. 1994). The Court does not weigh the evidence, nor does it make credibility determinations. The Court only determines whether there are any disputed issues and, if so, whether those issues are both genuine and material. *See Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 252 (1986); *Wilson v. Myers,* 823 F.2d 253, 256 (8th Cir. 1987) ("Summary ***858** judgment is not designed to weed out dubious claims, but to eliminate those claims with no basis in material fact.") (citing *Weight Watchers of Quebec, Ltd. v. Weight Watchers Int'l, Inc.,* 398 F.Supp. 1047, 1055 (E.D.N.Y. 1975)).

In a summary judgment motion, the moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact based on the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits, if any. *See Celotex,* 477 U.S. at 323; *Anderson,* 477 U.S. at 248. Specifically,

> A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:
>
> (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those

> made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
>
> (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Fed. R. Civ. P. 56(c)(1). If the moving party has carried its burden, the nonmoving party must then go beyond its original pleadings and designate specific facts showing that there remains a genuine issue of material fact that needs to be resolved by a trial. *See id.*; *see also Celotex,* 477 U.S. at 322-23; *Anderson,* 477 U.S. at 257.

"[T]he mere existence of *some* alleged factual dispute between the parties will not defeat a motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson,* 477 U.S. at 247-48. An issue is "genuine" if the evidence is sufficient to persuade a reasonable jury to return a verdict for the nonmoving party. *See id.* at 248. "As to materiality, the substantive law will identify which facts are material.... Factual disputes that are irrelevant or unnecessary will not be counted." *Id.*

Courts do not treat summary judgment as if it were a paper trial. Therefore, a "district court's role in deciding the motion is not to sift through the evidence, pondering the nuances and inconsistencies, and decide whom to believe." *Waldridge v. Am. Hoechst Corp.,* 24 F.3d 918, 920 (7th Cir. 1994). In a motion for summary judgment, the Court's job is only to decide, based on the evidentiary record that accompanies the moving and resistance filings of the parties, whether there really is any material dispute of fact that still requires a trial. *See id.* (citing *Anderson,* 477 U.S. at 249 and 10

Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 2712 (3d ed. 1998)).

Where, as here, there are cross motions for summary judgment, the parties share the burden of identifying the evidence that will facilitate this assessment. *Waldridge,* 24 F.3d at 921. "[T]he filing of cross motions for summary judgment does not necessarily indicate that there is no dispute as to a material fact, or have the effect of submitting the cause to a plenary determination on the merits." *Wermager v. Cormorant Twp. Bd.,* 716 F.2d 1211, 1214 (8th Cir. 1983) (citations omitted). "Cross motions simply require [the Court] to determine whether either of the parties deserves judgment as a matter of law on facts that are not disputed." *Barnes v. Fleet Nat. Bank,* 370 F.3d 164, 170 (1st Cir. 2004) (quoting *Wightman v. Springfield Terminal Ry.,* 100 F.3d 228, 230 (1st Cir. 1996)). Therefore, the Court will evaluate each of the motions "independently to ***859** determine whether there exists a genuine dispute of material fact and whether the movant is entitled to judgment as a matter of law." *See St. Luke's Methodist Hosp. v. Thompson,* 182 F.Supp.2d 765, 769 (N.D. Iowa 2001). The Court notes, however, that "[s]ummary judgments in favor of parties who have the burden of proof are rare, and rightly so." *Turner v. Ferguson,* 149 F.3d 821, 824 (8th Cir. 1998).

III. LAW AND ANALYSIS

A. *Count One*

In Count One, IRTL challenges Iowa Code §§ 68A.102(18) and 68A.402(9). Compl. ¶ 23. IRTL argues that these provisions "unconstitutionally impose[] political-committee ('PAC') status on groups whose major purpose is not the nomination or election of candidates."[9]

[9] IRTL does not allege that this provision is facially in-

Pl.'s Br. in Supp. of Mot. for Summ. J. (hereinafter "Pl.'s Br.") at 3 (Clerk's No. 44-1). The first challenged provision defines "political committee" as follows:

> 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.
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> 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.
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> c. A person, other than an individual, that accepts contributions in excess of seven hundred fifty dollars in the aggregate, makes expendi-

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valid; rather, it alleges that it is unconstitutional as applied to IRTL and other similar groups. *See* Compl. ¶ 28.

> tures 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 subsection 4.

Iowa Code § 68A.102(18). The term "[c]ommittee includes a political committee and a candidate's committee." *Id.* § 68A.102(8). These definitions apply to Iowa's campaign finance laws "unless the context otherwise requires." *Id.* § 68A.102.

The second challenged provision provides:

> A permanent organization temporarily engaging in 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 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 ***860** 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.

Id. § 68A.402(9).

IRTL's arguments regarding Count One are all premised upon IRTL's assertion that if it makes its intended independent expenditures,[10] it "will be defined by statute as a political committee under Iowa law."[11] Compl. ¶ 18 (citing Iowa Code § 68A.102(18)); *see also* Pl.'s Br. at 8 ("[I]f IRTL makes independent expenditures aggregating over $750 in a calendar year, it becomes not only an independent expenditure committee but also a committee and a political committee, and is subject to PAC burdens."). Defendants argue—as they did at the preliminary injunction stage—that this assertion is incorrect. *See* Defs.' Br. in Supp. of Mot. for Summ. J. (hereinafter "Defs.' Br.") at 7 (Clerk's No. 45-1) (arguing that the challenged provisions "do not impose PAC status on IRTL for making an independent expenditure"); Defs.' Resp. to Pl.'s Mot. for Prelim. Inj. (hereinafter "Defs.' PI Br.") at 5-6 (Clerk's No. 20); Hr'g

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[10] The Iowa Code defines the term "independent expenditure" as:

> One or more expenditures in excess of seven hundred fifty dollars in the aggregate for a communication that expressly advocates the nomination, election, or defeat of a clearly identified candidate or the passage or defeat of a ballot issue that is made without the prior approval or coordination with a candidate, candidate's committee, or a ballot issue committee.

Iowa Code § 68A.404(1).

[11] As the Court previously noted, "IRTL cannot be a permanent organization unless its activities fall under the definition in § 68A.102(18)." PI Order at 13 n.7 (citing Iowa Code § 68A.402(9)).

Tr.[12] 26:5-6 ("If you want to make an independent expenditure, you don't have to be a PAC ...."); *id.* at 28:8-16 (arguing that it is " 'clear from ... a plain reading of the statute' that IRTL will be an independent expenditure committee, not a political committee"). Therefore, according to Defendants, IRTL does not have standing to challenge these provisions. Defs.' Br. at 6.

Defendants base their argument largely on the following statutory provision:

> 3. A person, *other than a committee registered under this chapter,* that makes one or more independent expenditures shall file an independent expenditure statement. All statements and reports required by this section shall be filed in an electronic format as prescribed by rule.
>
> 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

[12] All citations to "Hr'g Tr." refer to the realtime transcript of the November 15, 2010 preliminary injunction hearing that was provided to the Court by the court reporter.

> 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 ***861** 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.

Iowa Code § 68A.404(3) (emphasis added). The Board refers to organizations that are required to file independent expenditure statements under this section as "independent expenditure committees."[13] *See* Iowa Admin. Code r. 351–4.1(1)(d). For ease of reference, the Court adopts the Board's definition of "independent

[13] Notably, "[a]lthough the Board decided to call this new category of entities [i.e. 'persons' regulated under Iowa Code § 68A.404(3)] 'independent expenditure committees,' it did not make them a subset of [the separately-defined category of] 'committees.' " PI Order at 8 (citing Iowa Admin. Code r. 351–4.1(1)).

expenditure committee" for the purposes of this Order. As the Court previously observed, "[i]f an organization has not yet 'registered as a committee,' but makes an independent expenditure ..., it would fall under the plain text of both sections [68A.404(3) and 68A.102 (18)]." PI Order at 7. Based on the plain text of § 68A. 404, an organization cannot simultaneously be both a political committee and "a person, other than a committee"—i.e., an independent expenditure committee. *See id.* (citing Iowa Code §§ 68A.404(3), (3)(b)). Unfortunately, however, the statute "does not clarify how these two sections should be applied when an organization arguably falls under both definitions." PI Order at 7.

Defendants assert that if an organization falls under the plain text of § 68A.404(3), it will be regulated as an independent expenditure committee, not a political committee—in other words, that the "context ... requires" that the definition in § 68A.102(8) not apply in the situation described above. *See* Hr'g Tr. 39:1-14 (referring to Iowa Code § 68A.102); *see also* Defs.' Br. at 6-7. This is a plausible reading of the statute and, based on the evidence in the record, it is consistent with how Iowa has, so far, actually interpreted the statute.[14] *See* Iowa Admin. Code r. 351–4.1(1) (providing different rules for independent expenditure committees, permanent organizations, and political committees); *see also* Advisory Op. 2010-03 (Clerk's No. 20-1 at 13) ("[A]n independent expenditure committee will not be subject to

[14] Indeed, at the preliminary injunction hearing, IRTL's counsel conceded that "[t]he State in its [advisory opinion] has said that [IRTL] will not be subject to the same types of restrictions that a political committee will be subject to...." Hr'g Tr. 9:1-3.

the same registration and reporting requirements as a PAC.").

Nonetheless, IRTL insists that it is being chilled by the mere existence of the challenged statutory definitions. *See* Defs.' Br. at 6-7. The Court is still not convinced that IRTL's dual-coverage interpretation of the statute is reasonable in light of the plain text of Iowa Code §§ 68A.404(3)(b) or that Iowa will interpret its statute in the way IRTL fears; however, this Court is generally without authority to construe or narrow state statutes. *See Boos v. Barry,* 485 U.S. 312, 330 (1988).

This Court does, however, have the authority to certify questions of state ***862** law to the Iowa Supreme Court when doing so would effectively save time, energy, and resources, and help to build "a cooperative judicial federalism." *Lehman Bros. v. Schein,* 416 U.S. 386, 390-91 (1974); *see also* L.R. 83 ("When a question of state law may be determinative of a cause pending in this court and it appears there may be no controlling precedent in the decisions of the appellate courts of the state ... [t]he court may, ... on its own motion, certify the question to the appropriate state court."). In this case, the question of whether the challenged provisions do, in fact, cover IRTL's intended activities—i.e., whether IRTL would, in fact, be regulated as both a "political committee" and an "independent expenditure committee" if it makes an independent expenditure—is determinative to the issue of whether IRTL has standing to challenge those provisions. *See* L.R. 83. The Court is not aware of any Iowa cases addressing this issue, let alone any "controlling precedent in the decisions of the appellate courts." *See id.* Moreover, the Court believes that certifying this issue of statutory interpretation is the most efficient way to resolve this matter.

Accordingly, the Court certifies the following questions to the Iowa Supreme Court:

> 1) If a corporation that has not previously registered as a political committee makes independent expenditures aggregating over $750 in a calendar year, does that corporation become, by virtue of such expenditures: (1) an "independent expenditure committee," as that term is defined in Iowa Admin. Code r. 351–4.1(1)(d); (2) a "political committee," as that term is defined by Iowa Code § 68A.102(18); or (3) both?
>
> 2) If a corporation that has not previously registered as a political committee and that "was originally organized for purposes other than engaging in election activities" makes independent expenditures aggregating over $750 in a calendar year, does that corporation become, by virtue of such expenditures, a "permanent organization" pursuant to Iowa Code § 68A. 402(9)?

B. *Count Two*

In Count Two, IRTL challenges Iowa Code §§ 68A. 402B(3), 68A.404(3), 68A.404(4), Iowa Administrative Code Rule 351–4.9(15), Form Ind–Exp–O, and Board Form DR–3.[15] Compl. ¶ 30. IRTL argues that these pro-

[15] There is some inconsistency in the record as to the precise title of this form. The form itself, as submitted by IRTL, is titled "DR3–Dissolution." *See* Clerk's No. 1-2 at 2. However, the Iowa Administrative Code Rules refer to the "statement of dissolution" as "Form DR–3." Iowa Admin. Code r. § 351–4.55(1); *see also* Compl. ¶ 3(b) (referring to the challenged form as "Form DR–3"). The Court will refer to this form as "Form DR–3."

visions impose "burdensome, PAC-style requirements [that] cannot be constitutionally imposed on groups simply for making independent expenditures."[16] ***863** Pl.'s Br. at 11 (citing *Citizens United,* 130 S.Ct. at 897-99).

1. *Standard of review.*

According to IRTL, the challenged provisions are "PAC-style requirements"[17] and "[l]aws that impose the

[16] IRTL alleges that these provisions are unconstitutional both "facially and as applied to IRTL and its intended activities." Compl. ¶ 38. However, IRTL does not distinguish between its facial and as-applied arguments in its brief. *See* Pl.'s Br. at 10-15. IRTL "does not, for example, explain how the [Iowa disclosure scheme] impinges upon its associational freedoms." *See Human Life of Wash. Inc. v. Brumsickle,* 624 F.3d 990, 1021-22 (9th Cir. 2010) (citing *Citizens United,* 130 S.Ct. at 914). Nor does IRTL argue that "by its nature, [IRTL] is unable to comply with the [Iowa disclosure scheme's] requirements." *See id.* at 1022 (citing *Fed. Election Comm'n v. Mass. Citizens for Life, Inc.,* 479 U.S. 238, 255 (1986)). Therefore, it is not clear how IRTL's as-applied challenge differs—if at all— from its facial challenge.

[17] IRTL's conclusion that certain requirements are "PAC-style requirements" appears to be based on highly generalized comparisons between the challenged provisions and the federal PAC requirements at issue in *Citizens United. See* Pl.'s Br. at 12. For example, IRTL reasons that the federal PACs discussed in *Citizens United* were required to "register" and, therefore, any "registration" requirement is an unconstitutional, "onerous" burden. *See id.* at 12-13. Even if the Court were persuaded by this highly questionable logic, the Eighth Circuit has already rejected the type of categorical approach IRTL advances here. *See Minn. Citizens Concerned for Life, Inc. v. Swanson,* 640 F.3d 304, 313 (8th Cir. 2011) (noting that the Supreme

kind of burdens imposed on PACs, e.g. registration and termination requirements, are ... subject to strict scrutiny." Pl.'s Br. at 11 (citing *Citizens United,* 130 S.Ct. at 897-98;) *Fed. Election Comm'n v. Mass. Citizens for Life, Inc. ("MCFL"),* 479 U.S. 238, 262-63 (1986). However, neither of the cases cited by IRTL squarely support this legal proposition.

In both *Citizens United* and *MCFL,* the Supreme Court considered the constitutionality of federal statutes that prohibited corporations and unions from using their general treasury funds to make certain independent expenditures. *See Citizens United,* 130 S.Ct. at 886; *MCFL,* 479 U.S. at 241. In this case, however, the challenged provisions do not ban any independent expenditures. *See* Iowa Code §§ 68A.402B(3), 68A.404(3), 68A. 404(4); Iowa Admin. Code r. 351–4.9(15); Form Ind–Exp–O; Form DR–3. They "impose no ceiling on campaign-related activities and do not prevent anyone from speaking." *See Citizens United,* 130 S.Ct. at 914 (quoting *Buckley v. Valeo,* 424 U.S. 1, 64 (1976) and *McConnell v. Fed. Election Comm'n,* 540 U.S. 93, 201 (2003)) (internal quotation marks omitted). They do not substantially burden speech by "impos[ing] an unprecedented penalty on [those] who robustly exercise[] [their] First Amendment rights." *See Ariz. Free Enter. Club's Freedom Club PAC v. Bennett,* 131 S.Ct. 2806, 2818 (2011) (quoting *Davis v. Fed. Election Comm'n,* 554 U.S. 724, 739 (2008)) (applying strict scrutiny to a state matching-funds requirement that substantially burdened certain candidate-related speech). Therefore, although they "may burden the ability to speak," they

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Court "based its holding [in *Citizens United*] on the cumulative effects of the federal regulations and not the existence of any specific regulation" (citing 130 S.Ct. at 897)).

are only subject to exacting scrutiny—not strict scrutiny. *See Citizens United,* 130 S.Ct. at 914; *see also Minn. Citizens Concerned for Life, Inc. v. Swanson,* 640 F.3d 304, 315 (8th Cir. 2011) ("Unlike outright bans on corporate independent expenditures, which are ... subjected to strict scrutiny, courts generally view corporate disclosure laws as beneficial and subject such regulations to the less-rigorous exacting-scrutiny standard."); *Doe v. Reed,* 130 S.Ct. 2811, 2818 (2010) (applying exacting scrutiny where the challenged provision was "not a prohibition on speech ...").

2. *Analysis of the challenged provisions.*

"[U]nder exacting scrutiny, the government must only show a substantial relation between the disclosure requirement and the government's important interest ***864** in providing information to the electorate." *Swanson,* 640 F.3d at 315 (quoting *Citizens United,* 130 S.Ct. at 914 (internal quotation marks omitted)). The challenged provisions require certain persons[18] who make independent expenditures to: (1) file Form Ind–Exp–O[19] "within forty-eight hours of the making of an inde-

[18] Specifically, these requirements apply to "person[s] other than a committee registered under this chapter that make[] one or more independent expenditures." Iowa Code § 68A.404(3). These requirements expressly do "not apply to a candidate, candidate's committee, state statutory political committee, county statutory political committee, or a political committee." *Id.* § 68A.404(3)(b); *see also id.* § 68A.102 (defining terms). They also do "not apply to a federal committee or an out-of-state committee that makes an independent expenditure." *Id.* § 68A.404(3)(b).

[19] Although the statute requires both an "independent expenditure statement" and an "initial report," *see* Iowa Code § 68A.404(3)(a), the Board allows independent expenditure committees to file a single form, Form Ind–Exp–O, to

pendent 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" (Iowa Code § 68A.404(4)(a)); (2) file subsequent reports up to four times a year[20] (*id.* § 68A.404(3)(a); *see also id.* §§ 68A.402(2), 68A.402A); (3) file a supplemental report if, during an election year, "the person making the independent expenditure either raises or expends more than one thousand dollars" (*id.* § 68A.404(3)(a)(1); *see also id.* § 68A.402 (2)(b)); and (4) file a termination report with the Board within thirty days of determining that it will "no longer make an independent expenditure" (*id.* § 68A.402B).

Defendants argue that the challenged provisions are substantially related to the government's "compelling interest in ensuring that shareholders and citizens are provided with the information needed to hold corporate and elected officials accountable for their positions and supporters" and that such disclosures are made in a timely manner.[21] Defs.' Br. at 9 (internal quotation marks omitted); *see also id.* at 11-12. There-

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satisfy both requirements. *See* Smithson Aff. ¶ 8 (Clerk's No. 20-1) (citing Iowa Admin. Code r. 351–4.27(2)).

[20] Specifically, they must be "filed according to the same schedule as the office or election to which the independent expenditure was directed." Iowa Code § 68A.404 (3)(a). Candidates are required to file reports four times a year during election years and once in non-election years. *See id.* § 68A.402(2).

[21] Defendants also assert that Iowa "has a compelling interest in corporate governance, and ensuring that corporate entities that are created under state law operate in a manner that honors the privileges given to the corporate form." Defs.' Br. at 9 (internal quotation marks omitted).

fore, according to Defendants, the challenged provisions survive exacting scrutiny. *See id.* at 13. In response, IRTL does not argue that the Iowa disclosure scheme fails exacting scrutiny.[22] *See* Pl.'s Resp. to Defs.' Mot. for Summ. J. (hereinafter "Pl.'s Resp. Br.") at 6-9 (Clerk's No. 48); *see also* Pl.'s Br. at 10-15. Rather, IRTL insists that the challenged provisions are subject to strict scrutiny and argues that they are unconstitutional because they are not "narrowly tailored to a compelling [government] interest."[23] *See* Pl.'s Resp.

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[22] IRTL does suggest in a footnote that one of the requirements in the challenged provisions, the 48–hour deadline for filing Form Ind–Exp–O, would fail exacting scrutiny. *See* Pl.'s Br. at 14 n.21. The Court does not agree, however, for the reasons discussed below.

[23] The essence of IRTL's argument is that Iowa could have chosen a less-burdensome disclosure scheme and that, therefore, the one it chose is unconstitutional. *See* Pl.'s Resp. Br. at 8-9; *see also* Pl.'s Br. at 11 ("In analyzing the constitutionality of Iowa's scheme, it is important to compare it to the less-restrictive, independent-expenditure federal scheme ....") (citing *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal,* 546 U.S. 418, 429 (2006)); *id.* at 14 (arguing that the challenged provisions are unconstitutional because "there is no governmental interest that cannot be satisfied under the less-restrictive federal [disclosure] scheme"). However, as the Court previously explained, the least-restrictive-means test has no applicability in this case because the challenged provisions are subject to exacting—not strict—scrutiny. *See* PI Order at 24-25; *see also* Pl.'s Br. at 11 n.16 (conceding that the least restrictive means test only applies if strict scrutiny applies). "Therefore, even if less-burdensome alternatives do exist, that fact does not, contrary to IRTL's contentions, render these provisions unconstitutional." PI Order at 24. The case cited by IRTL

Br. at 9.

In its recent opinion in *Minnesota Citizens Concerned for Life, Inc. v. Swanson,* ***865** the Eighth Circuit considered a constitutional challenge to Minnesota's independent-expenditure disclosure scheme. 640 F.3d at 307. The disclosure scheme at issue in *Swanson* "created two means by which corporations could make" independent expenditures. *Id.* at 308. Under the Minnesota scheme, a corporation "wishing to make such expenditures [could] either form and register an independent expenditure political fund if the expenditure is in excess of $100 or contribute to an existing independent expenditure political committee or political fund." *Id.* at 308-09 (quoting Minn. Stat. § 10A.12, subdiv. 1a and citing Minn. Stat. § 211B. 15, subdiv. 3 (internal quotation marks omitted)). A corporation that chose to create a fund was "subject to a series of statutory requirements" which included appointing a treasurer, segregating its funds from other corporate funds, filing "periodic, detailed reports" up to five times a year, and filing a termination report when the "political fund wants to dissolve." *See id.* at 309.

The Eighth Circuit concluded that this scheme was "adequately tailored" under exacting scrutiny because "Minnesota's provisions collectively impose no materially greater burden on corporations than the disclosure laws at issue in *Citizens United.*"[24] *Id.* at 316. The

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does not compel a different conclusion because in *Gonzales,* unlike here, the statute at issue expressly incorporated a "least restrictive means" test. *See* 546 U.S. at 423.

[24] The Court notes that, although the Eighth Circuit's opinion in *Swanson* indicates that the fact that the challenged scheme "imposed no materially greater burden" was *sufficient* to show that the scheme was sufficiently tailored,

Eighth Circuit found that "[e]ven Minnesota's specific requirements for a treasurer, periodic reporting, and a separate fund are sufficiently tailored because, within the context of the entire Minnesota regulatory scheme, each requirement greatly enhances the transparency of corporate expenditures while imposing only reasonable burdens." *Id.*

In this case, IRTL argues that "Iowa law is like the burdensome, PAC-style disclosure *Citizens* [*United*] found 'burdensome' and 'onerous,'" and suggests that the challenged provisions are substantially more burdensome than the disclosure laws that were upheld in *Citizens United.*[25] *See* ***866** Pl.'s Resp. Br. at 7. Specifically, IRTL objects to Iowa's requirements that groups making independent expenditures: (1) file Form Ind–

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the Eighth Circuit never stated that all disclosure schemes must pass a "no materially greater burden" test in order to be "substantially related to [the state's] important interest in providing information." *See Swanson,* 640 F.3d at 316.

[25] IRTL also argues that the only "constitutionally justifiable" disclosure scheme for organizations that make independent expenditures is the precise scheme that was upheld in *Citizens United,* which, according to IRTL, consists of "on-ad attribution and one-time reports." *See* Pl.'s Resp. Br. at 7. The Court does not agree and notes that IRTL's counsel made the same argument to the Eighth Circuit in *Swanson. Compare id. with* Reply Br. of Pls.-Appellants at 3, *Minn. Citizens Concerned for Life, Inc. v. Swanson,* 640 F.3d 304 (8th Cir. 2011) (No. 10-3126), 2010 WL 5558208. Nonetheless, the Eighth Circuit upheld the Minnesota disclosure scheme, which required more than on-ad attribution and one-time reports. *See Swanson,* 640 F.3d at 316. Therefore, the Court cannot agree that the universe of justifiable disclosure requirements consists only of "on-ad attribution and one-time reports."

Exp–O "within forty-eight hours"; (2) remain registered as "independent expenditure committees" until they file a termination report;[26] and (3) file periodic reports. *See id.* at 8-9. Although IRTL attacks the various requirements of the challenged provisions separately, the Court "must evaluate [Iowa's] provisions on independent expenditures as a whole." *See Swanson,* 640 F.3d at 314.

Considered as a whole, the challenged provisions "collectively impose no materially greater burden on corporations than the disclosure laws at issue in *Citizens United.*"[27] *See id.* The information required by Form Ind–Exp–O "about the corporation's contributions and expenditures is similar to the disclosure requirements upheld in *Citizens United*." *See id.; compare id.* at 313-14 (explaining those requirements and citing 2 U.S.C. § 434(f)) *with* Pl.'s App. at 27 (showing

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[26] According to IRTL, Iowa Code § 68A.402B(3) "effectively requires [an independent expenditure committee] to cease to exist" when it files its termination report. Pl.'s Resp. Br. at 9. IRTL also asserts that "the state Board must approve the dissolution before the independent expenditure committee is relieved of its ongoing status and obligations." *Id.* However, as the Court has previously explained, neither of these factual assertions is correct—i.e., neither of these requirements apply to independent expenditure committees. *See* PI Order at 31–34 (addressing the substantially identical arguments made by IRTL at the preliminary injunction stage).

[27] Indeed, the challenged provisions impose no materially greater burden than the disclosure requirements the Eighth Circuit recently upheld in *Swanson. See* 640 F.3d. at 314 (upholding a disclosure scheme that required, *inter alia,* periodic reporting, registration, and termination reports)

Form Ind–Exp– O). Even the specific requirement challenged by IRTL—i.e., the 48-hour deadline for filing Form Ind–Exp–O and the periodic reporting requirement—are sufficiently tailored because, when viewed in the context of the entire Iowa regulatory scheme, these requirements "greatly enhance[] the transparency of corporate expenditures while imposing only [a] reasonable burden."[28] *See Swanson,* 640 ***867** F.3d at

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[28] IRTL's arguments to the contrary do not compel a different conclusion. IRTL argues that Iowa does not need such a short deadline—essentially, though not expressly, asserting that the 48-hour reporting deadline is not the least restrictive means for advancing Iowa's informational interests. *See* Pl.'s Br. at 13 n. 18, 14 n.21. However, because this provision does not ban speech, such narrow tailoring is not required. *See Swanson,* 640 F.3d at 315; *N.C. Right to Life Comm. Fund for Indep. Political Expenditures v. Leake,* 524 F.3d 427, 439 (4th Cir. 2008). IRTL's arguments also ignore the fact that other courts, both before and after *Citizens United,* have upheld similar—and even shorter—reporting deadlines for independent expenditures. *SpeechNow.org v. Fed. Election Comm'n,* 599 F.3d 686, 697 (D.C. Cir. 2010) (upholding a federal requirement that "those who make independent expenditures but are not organized as political committees" report "within 24 hours expenditures of $1000 or more made in the twenty days before an election, and report[] within 48 hours any expenditures or contracts for expenditures of $10,000 or more made at any other time") (internal citations omitted); *Leake,* 524 F.3d at 434-34, 439 (upholding a state requirement that entities making certain independent expenditures file a report "within twenty four hours of making total expenditures in excess of $5,000" and noting that "in *McConnell* the Supreme Court upheld a nearly identical provision that required a report to be filed within twenty-four hours of the date on which expenditures exceeded a trigger amount"

316; *see also* PI Order at 27-31 (discussing in detail the substantially identical arguments IRTL made at the preliminary injunction stage). Therefore, the Court concludes that the challenged provisions are adequately tailored to survive exacting scrutiny.[29] Ac

(citing 540 U.S. at 195-96)).

[29] IRTL's argument regarding its interpretation of *Buckley*'s "major purpose test" do not compel a different conclusion. IRTL argues that "[t]he challenged provisions ... violate *Buckley*'s mandate that burdensome PAC-style regulations may be imposed only on 'organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate.' " Pl.'s Br. at 15 (quoting *Buckley,* 424 U.S. at 79); *see also* Pl.'s Resp. Br. at 6-7. Therefore, according to IRTL, Iowa law must differentiate between groups "making over $750 in independent expenditures *whose major purpose is making independent expenditures* expressly advocating the nomination or election of candidates (e.g., independent expenditures constitute more than 50% of annual disbursements) [and those] whose major purpose is something else (e.g., independent expenditures constitute less than 50% of annual disbursements)." Pl.'s Resp. Br. at 6-7; *see also* Pl.'s Br. at 15 (making the same argument about whether an organization may be deemed to be a "political committee"); *see also id.* at 9 n. 10 (arguing that a group's major purpose must be determined "by reviewing its organic documents ... or by looking at how it spends a majority of its disbursements." (citing *MCFL,* 479 U.S. at 252 n.6, 262)). The Court does not agree. Nothing in *Buckley* or any of the other Supreme Court cases cited by IRTL "mandates" the conclusion IRTL urges here —namely, that a state may not impose "PAC-style burdens" on an organization unless that organization has the major purpose of making independent expenditures. *See* PI Order at 25-26 (rejecting IRTL's argument that this test is mandated by *Buckley*). As the Ninth Circuit recently explained:

cordingly, Defendants are entitled to judgment as a matter of law on Count Two of IRTL's complaint.

C. *Count Three*

In Count Three, IRTL challenges Iowa Code § 68A.

> The *Buckley* Court's statement that a narrow definition of political committee "can be assumed to fall within the core area sought to be addressed by Congress" is most reasonably read to mean exactly what it says—that it was clear and uncontroversial that the burdens imposed by the disclosure requirements in that case were "by definition" substantially related to the government's interests when applied to organizations whose single major purpose was political advocacy. Nothing in *Buckley* suggests, however, that disclosure requirements are constitutional only when so applied.

Human Life of Wash. Inc. v. Brumsickle, 624 F.3d 990, 1009 (9th Cir. 2010). The Court also rejects IRTL's argument that *MCFL* "reaffirmed the major-purpose requirement." Pl.'s Br. at 3 (citing 479 U.S. at 262). "*MCFL* did no such thing." *Brumsickle,* 624 F.3d at 1010 (rejecting the same argument and observing that "in *MCFL,* political advocacy was not 'a' major purpose—much less 'the' major purpose—of MCFL, which the Court noted only 'occasionally engages in activities on behalf of political candidates,' and whose 'central organizational purpose is issue advocacy.'" (quoting 497 U.S. at 253 n.6)).

Moreover, even if IRTL were correct that the challenged provisions must be limited to organizations with a certain "major purpose," the Court would not adopt the precise test urged by IRTL. *Massachusetts Citizens* "did not hold, or even suggest" that disbursements and organic documents are the only ways to determine an organization's "major purpose." *See Real Truth About Obama, Inc. v. Fed. Election Comm'n,* No. 3:08-cv-483, 796 F.Supp.2d 736, 751-52, 2011 WL 2457730, at *14 (E.D. Va. June 16, 2011).

503, which bans direct corporate campaign contributions.[30] Compl. ¶ 40. IRTL argues that this ban is ***868**

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[30] This statute provides, in relevant parts, that:

> 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. An insurance company, savings and loan association, bank, credit union, or corporation may use money, property, labor, or any other 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 an insurance company, savings and loan association, bank, credit union, or corporation as permitted by this subsection. [...]
>
> 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.

Iowa Code § 68A.503.

unconstitutional in light of *Citizens United.*[31] *See* Pl.'s Br. at 15-16. Specifically, IRTL argues that Iowa's direct-contribution ban violates its rights under the First and Fourteenth Amendments. *Id.* at 16-17, 26.

As an initial matter, IRTL argues that § 68A.503 is subject to strict scrutiny.[32] Pl.'s Br. at 18. The Court does not agree. The Eighth Circuit has recently confirmed that, even in the wake of *Citizens United,* bans on corporate contributions are still subject to only "closely drawn"—not strict—scrutiny.[33] *See Swanson,*

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[31] IRTL alleges that this provision is unconstitutional on its face and "as applied to IRTL and its intended activities." Compl. ¶ 33.

[32] In support of this assertion, IRTL makes the same three general arguments that the Court rejected at the preliminary injunction stage. *Compare* Pl.'s Br. at 18-24 *with* PI Order at 35. Specifically,

> IRTL concedes that "since *Buckley,* courts have subjected contribution limits to less demanding review." However, IRTL argues strict scrutiny should apply in this case because: (1) Iowa bans contributions, instead of limiting them; (2) the ban "impermissibly singles out certain speakers, e.g. corporations and banks"; and (3) the ban is "a content-based regulation."

PI Order at 35 (internal citation omitted). The Court finds IRTL's arguments to be no more persuasive now than they were at the preliminary injunction stage. *See id.* at 35-37.

[33] The Court also notes that, like the ban at issue in *Swanson,* Iowa's "ban on direct corporate contributions serves a purpose unrelated to the expressive content of the contributions, namely the prevention of corruption." *See* 640 F.3d at 319 n.8; *see also* Defs.' Br. at 14. And § 68A.503 does not, by its terms "distinguish favored speech from disfavored speech on the basis of the ideas or views expressed."

640 F.3d at 318; *see also generally Bennett,* 131 S.Ct. at 2817 (describing a law that imposed contribution limits as a "stricture[] on campaign-related speech" that was "less onerous" than laws that regulate independent expenditures and, therefore, subject to a "lower level of scrutiny"). Therefore, "a restriction on direct contributions will pass constitutional muster if the limit is 'closely drawn to match a sufficiently important interest.' "[34] 640 F.3d at 318 (quoting *Fed. Election Comm'n v. Beaumont,* 539 U.S. 146 (2003)). ***869**

Applying this standard in *Swanson,* the Eighth Circuit concluded that Minnesota's ban on corporate contributions was not constitutionally deficient. *Id.* at 319. In doing so, the Eighth Circuit indicated that both "avoiding *quid pro quo* corruption and the circumvention of its other limits on direct contributions" were sufficiently important governmental interests. *Id.* The Eighth Circuit also stated that "Minnesota appears to have properly tailored its restriction because, pursuant to *Beaumont,* Minnesota can generally ban all direct corporate contributions." *Id.*

See Bartnicki v. Vopper, 532 U.S. 514, 526 (2001). Therefore, it is a content-neutral regulation. *See id.; see also Swanson,* 640 F.3d at 319 n. 8 (rejecting the argument that Minnesota's direct contribution ban was a content-based restriction on speech).

[34] Notably, the arguments advanced by IRTL regarding Iowa's corporate contribution ban appear to be substantially identical to those advanced by IRTL's counsel in *Swanson. Compare* Pl.'s Br. at 15-27 *with* Opening Br. of Pls.-Appellants at 40-56, *Minn. Citizens Concerned for Life, Inc. v. Swanson,* 640 F.3d 304 (8th Cir. 2011) (No. 10-3126), 2010 WL 4852521.

In this case, Iowa also has a sufficiently important interest in the prevention of corruption.[35] *See id.; see also Beaumont,* 539 U.S. at 154 (noting that the ban upheld in that case "was and is intended to prevent corruption or the appearance of corruption" (internal quotation marks omitted)). And, because "pursuant to *Beaumont,* [Iowa] can generally ban all direct corporate contributions," § 68A.503 is sufficiently "closely drawn" to match this anti-corruption interest.[36] *See Swanson,* 640 F.3d at 319.

Therefore, the Court concludes that § 68A.503 "pass[es] constitutional muster."[37] *See id.* Ac

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[35] IRTL argues that "Iowa does not have contributions limits," and, "[t]herefore, the necessary premise for any anti-circumvention interest has not been asserted." Pl.'s Br. at 25 n.30. Even if this is true, IRTL does not seriously contest that Iowa has a "sufficiently important interest" in preventing corruption or the appearance of corruption. *See id.* at 24-26 (discussing only the inapposite "compelling interest" test and whether § 68A.503 is "narrowly tailored" to address such an interest). And nothing in either *Beaumont* or *Swanson* suggests that the government's interest in preventing corruption is not sufficient to support a ban on direct corporate contributions. *See Beaumont,* 539 U.S. at 154-59; *Swanson,* 640 F.3d at 318-19.

[36] To the extent that any of IRTL's other arguments survive *Swanson,* the Court rejects them for the same reasons it rejected them at the preliminary injunction stage. *See* PI Order at 34-42.

[37] IRTL's recently-filed "Notice of Additional Authority" does not compel a different conclusion. *See* Clerk's No. 52 (citing and attaching *United States v. Danielczyk,* No. 1:11-cr-85, 788 F.Supp.2d 472, 2011 WL 2161794 (E.D. Va. May 26, 2011)) ("*Danielczyk I*"); and *United States v. Danielczyk,* No. 1:11-cr-85, 791 F.Supp.2d 513, 2011 WL 2268063 (E.D.

Va. June 7, 2011) ("*Danielczyk II*"). In *Danielczyk,* the court concluded that the federal ban on direct corporate campaign contributions was unconstitutional as an "inescapable" logical consequence of *Citizens United. Danielczyk I,* 788 F.Supp.2d at 494-95, 2011 WL 2161794, at *19. However, as quickly noted by numerous commentators, the court failed to discuss *Beaumont* in reaching this conclusion and, a few days dater, the court requested additional briefing on the issue of whether it should reconsider its ruling in light of *Beaumont. See Danielczyk II,* 791 F. Supp. 2d at 513-14, 2011 WL 2268063, at *1. On reconsideration, the court held that the ban was "unconstitutional as applied to the circumstances *of this case.*" *Id.* (emphasis in original). The court reasoned that because *Beaumont*'s express holding referred to "nonprofit advocacy corporations," *Beaumont* was not controlling authority in cases, such as *Danielczyk,* that involve other types of corporations. *Id.* at 518-19, at *5. This conclusion is, as the *Danielczyk* court noted, contrary to the conclusion reached by the Eighth Circuit in *Swanson. See id.* at 514-15, at *2.

Even if the Court were free to follow *Danielczyk* instead of *Swanson*—which, of course, it is not—the Court would still not find *Danielczyk* to be persuasive authority. This Court has already rejected the argument that *Beaumont* was implicitly overruled by *Citizens United,* see PI Order at 39 n. 20, and nothing in *Danielczyk* persuades the Court that it was incorrect in so doing. Additionally, the conclusion that *Danielczyk* found to be logically "inescapable," *see* 791 F.Supp.2d at 515, 2011 WL 2268063, at *2, ignores the longstanding distinction that the Supreme Court has drawn between contributions and expenditures. *See Citizens United,* 130 S.Ct. at 921 (recognizing "the careful line that *Buckley* drew to distinguish limits on contributions to candidates from limits on independent expenditures"); *see also Thalheimer v. City of San Diego,* Nos. 10-55322, 10-55324, 10-55434, 645 F.3d 1109, 1113 (9th Cir. 2011) (noting that

cordingly, Defendants ***870** are entitled to judgment as a matter of law on Count Three of IRTL's complaint.

D. *Count Four*

In Count Four, IRTL challenges Iowa Code §§ 68A. 404(2)(a)-(b), 68A.404(5)(g), and Form Ind–Exp–O. Compl. ¶ 45. According to IRTL, these provisions "unconstitutionally forbid[] corporations, but not other groups or associations, from making independent expenditures unless the board of directors expressly authorizes the independent expenditures, in advance and within the same calendar year that the independent expenditures are to be made."[38] Pl.'s Br. at 28. Specifi-

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"*Buckley*'s expenditure-contribution distinction continues to frame the constitutional analysis of campaign finance regulations"). The Court also agrees with a leading election law expert's characterization of the argument accepted by the *Danielczyk* court— namely, that *Beaumont* applies only to nonprofit advocacy corporations—as "very weak." *See* Rick Hasen, *Breaking News: Judge in Va. Contributions Case Reaffirms Opinion Striking Down Federal Campaign Contribution Limits Law (Danielczyk),* ELECTION LAW BLOG (June 7, 2011), www. election lawblog. org ("In *Beaumont,* the Court held that *even* such ideological ... corporations could constitutionally be barred from making direct contributions to candidates.... If such non-profit corporations could constitutionally be barred from making contributions to candidates, *a fortiori* for-profit corporations should be barred as well."). Moreover, *Danielczyk* expressly limited its holding to cases *not* involving nonprofit advocacy corporations. *See Danielczyk II,* 791 F.Supp.2d at 513-14, 519-20, 2011 WL 2268063, at *1, *6-7. Therefore, by its own terms, *Danielczyk* has no applicability to the instant case.

[38] IRTL alleges that these provisions are unconstitutional both "facially and as applied to IRTL and its intended activities." Compl. ¶ 53.

cally, IRTL argues that these provisions violate its rights under the First and Fourteenth Amendments. *Id.* at 28, 34. The Court will consider each of these arguments in turn.

1. *First Amendment.*

Defendants argue, *inter alia,* that IRTL does not have standing to challenge these provisions under the First Amendment. Defs.' Br. at 17. "Article III of the Constitution limits federal jurisdiction to cases and controversies, and the 'core component of standing is an essential and unchanging part of the case-or-controversy requirement.'" *Advantage Media, L.L.C. v. City of Eden Prairie,* 456 F.3d 793, 799 (8th Cir. 2006) (quoting *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560 (1992)).

> In order to prove standing, a plaintiff must demonstrate: (1) an actual injury that is concrete and particularized and not conjectural or hypothetical; (2) a causal connection between the injury and the defendant's conduct; and (3) a likelihood, and not a mere speculative possibility, that the plaintiff's injury will be redressed by a favorable decision.

Nat'l Right to Life Political Action Comm. v. Connor, 323 F.3d 684, 689 (8th Cir. 2003) (citing *Lujan,* 504 U.S. at 560-61). "[S]tanding cannot be inferred argumentatively from averments in the pleadings, but rather must affirmatively appear in the record." *FW/PBS, Inc. v. City of Dallas,* 493 U.S. 215, 231 (1990) (internal citation marks and quotation omitted), *overruled on other grounds by City of Littleton v. Z.J. Gifts D-4, L.L.C.,* 541 U.S. 774 (2004). "In response to a summary judgment motion, however, the plaintiff can no longer rest on such 'mere allegations,' but must

'set forth' by affidavit or other evidence 'specific facts' ...." *Lujan,* 504 U.S. at 561. ***871**

IRTL argues that it has standing because it "is chilled by the prior-board-approval requirement."[39] Pl.'s Br. at 28. It is true that, in the First Amendment context, a "chilling effect alone may constitute injury." *Zanders v. Swanson,* 573 F.3d 591, 593 (quoting *St. Paul Area Chamber of Commerce v. Gaertner,* 439 F.3d 481, 487 (8th Cir. 2006)). "Yet, the 'chilling' effect of exercising a First Amendment right must be objectively reasonable." *Id.* at 594 (citing *Republican Party of Minn. v. Klobuchar,* 381 F.3d 785, 792 (8th Cir. 2004)). Therefore, in order to establish that it has suffered an Article III injury, IRTL must demonstrate that "it

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[39] IRTL also argues that it has standing to challenge these provisions because they "burden[] IRTL's ability to select the most effective means of advancing its cause, and dictate[], without constitutional justification, the inner workings and decision-making process of a citizen group engaged in core political speech." Pl.'s Br. at 29. However, IRTL does not explain precisely how the challenged regulations will "burden[] IRTL's ability to select the most effective means of advancing its cause." *See id.* It is true that "[t]he First Amendment protects [a speaker's] right 'not only to advocate [their] cause but also *to select* what they believe to be the most effective means for so doing.' " *Id.* at 30 (quoting *Meyer v. Grant,* 486 U.S. 414, 424 (1988)) (emphasis added). However, IRTL does not argue, let alone demonstrate, that the challenged provisions bar IRTL from selecting—or using—any particular "avenue[] of communication." *See Meyer,* 486 U.S. at 424; *see also Nixon v. Shrink Mo. Gov't PAC,* 528 U.S. 377, 398 n.* (2000) (Stevens, J., concurring) (characterizing *Meyer* as a case where "the prohibition entirely foreclose[d] a channel of communication").

must either make significant changes to its operations to obey the regulation, or risk a criminal enforcement action by disobeying the regulation." *Minn. Citizens Concerned for Life v. Fed. Election Comm'n,* 113 F.3d 129, 131 (8th Cir. 1997); *see also Zanders,* 573 F.3d at 594.

In this case, IRTL has not alleged or asserted that it will have to make any changes at all—let alone *significant* changes—in order to obey the challenged provisions. *See* Compl. ¶¶ 44–53. Indeed, IRTL has not even asserted that it has (or will be) "forced to modify their speech and behavior to comply with" the challenged provisions.[40] *See Gaertner,* 439 F.3d at 487 (con-

[40] IRTL has not even alleged that it, in fact, wishes to make independent expenditures without the approval of a majority of its board members. *Cf. Ark. Right to Life State Political Action Comm. v. Butler,* 146 F.3d 558, 560 (8th Cir. 1998) (concluding that the plaintiffs had standing where they alleged that they "would like to" engage in the activity proscribed in the challenged statute). There is also evidence in the record indicating that IRTL did not make the expenditure described in the Complaint because of "the day-to-day stuff, being in a very small office and not seeing things through"—not because of a chill. *Id.* at 40 (Bowen Dep. Tr. 28:3-5). There is also unrebutted evidence in the record indicating that IRTL's board did, in fact, approve the independent expenditure described in the Complaint. *See* Defs.' App. at 39 (Bowen Dep. Tr. 23:10-17). Of course, as IRTL points out, the mere fact that IRTL was not chilled in 2010 does not mean it could not be chilled in future elections. However, while IRTL complains that the challenged provision burdens its "inner workings and decision-making process," *see* Pl.'s Br. at 29, IRTL has not submitted any *evidence* about its "inner workings" or "decision-making process"—let alone evidence that indicates that IRTL would have to make any changes at all in order to comply with the

cluding that plaintiffs had standing to bring a pre-enforcement constitutional challenge where, *inter alia,* "they assert[ed] that they have been forced to modify their speech and behavior to comply with" the challenged statutes). Instead, IRTL merely avers that it "is chilled by the prior-board-approval requirement." ***872** Pl.'s Br. at 28. This mere "allegation[ ] of a subjective chill" is not sufficient to meet IRTL's burden. *See Eckles v. City of Corydon,* 341 F.3d 762, 767 (8th Cir. 2003) (stating that, in order to establish standing, a plaintiff "must present more than allegations of a subjective chill") (quoting *Bigelow v. Virginia,* 421 U.S. 809, 816-17 (1975) (internal quotation marks omitted)). Therefore, the Court concludes that IRTL has not met its burden to show that it has standing to bring a First Amendment challenge against these provisions.

2. *Fourteenth Amendment.*

IRTL argues that the challenged provisions violate the Fourteenth Amendment because they target corporations for negative treatment.[41] *See* Pl.'s Br. at 34. The main provision challenged by IRTL states:

> 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

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challenged provisions.

[41] Defendants do not argue that IRTL lacks standing to bring this claim. *See* Defs.' Br. at 17. However, to the extent that IRTL's Fourteenth Amendment claim duplicates its First Amendment claim, the Court finds that IRTL does not have standing to assert it. *See* PI Order at 22.

> 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, executive council, or similar organizational leadership body 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.

Iowa Code § 68A.404(2). Contrary to IRTL's assertion, this provision does not discriminate between corporations and "other groups or associations." *Compare id. with* Pl.'s Br. at 28.

Nonetheless, IRTL insists that this provision actually targets corporations because, among other things, two of the other challenged provisions—namely, Iowa Code § 68A.404(5)(g) and Form Ind–Exp–O—refer only to "corporations." *See* Pl.'s Br. at 31–32. Section § 68A.404(5)(g) requires:

> 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 independent expenditure was incurred.

Form Ind–Exp–O includes a "Statement of Certification" which requires the person submitting the form to affirm that "[i]f [the] expenditure was made by a corporation[,] the board of directors, executive council, or similar organizational leadership body expressly authorized the expenditure by resolution or other affirmative action this year." *See* Pl.'s App. at 27.

Even if this requirement only applies to corporations, IRTL must still show that it is "similarly situated to those who allegedly receive favorable treatment." *Arnold v. City of Columbia,* 197 F.3d 1217, 1220 (8th Cir. 1999). In its ***873** brief, IRTL asserts that "corporations and other organized associations are similarly situated." Pl.'s Br. at 27. However, IRTL does not cite a single piece of evidence in support of this statement, nor does it identify any relevant similarities between corporations and these other associations.[42] *See*

[42] "It is *not* the duty of the courts to scour a record at the summary judgment stage." *Sam's Riverside, Inc. v. Intercon Solutions, Inc.,* No. 4:09-cv-20, 2011 WL 2333394, at *13 n. 41 (S.D. Iowa June 10, 2011) (quoting *Barth v. Village of Mokena,* No. 03 C 6677, 2006 WL 862673, at *19 (N.D. Ill. Mar. 31, 2006) (internal quotation marks omitted)). The Court notes, however, that in the Complaint, IRTL avers that corporations are similarly situated to "labor unions and other entities, such as LLCs and general partnerships." Compl. ¶ 52. A "verified complaint is the equivalent of an affidavit for the purposes of summary judgment." *Roberson v. Hayti Police Dep't,* 241 F.3d 992, 994 (8th Cir. 2001). However, an affidavit used to oppose a motion for summary judgment "must be made on personal knowledge, set out facts that would be admissible in evidence, and *show* that the affiant ... is competent to testify on the matters stated." Fed. R. Civ. P. 56(c)(4) (emphasis added); *see also* Fed. R. Evid. 602 ("A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that

id. Indeed, IRTL's "Statement of Undisputed Material Facts" does not discuss this issue at all. *See* Clerk's No. 44-2. IRTL's bare, conclusory statement is not sufficient to carry its burden on this key element of its equal protection claim.[43] *See Nolan v. Thompson,* 521 F.3d 983, 990 (8th Cir. 2008) (affirming dismissal of an

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the witness has personal knowledge of the matter."). In this case, there is no indication that IRTL's Executive Director, who verified the complaint, is competent to testify as to any factual similarities between corporations and unions or other "organized associations." Therefore, the Court may not consider the Complaint as evidence on this issue. *See Aucutt v. Six Flags Over Mid-Am., Inc.,* 85 F.3d 1311, 1317 (8th Cir. 1996).

[43] IRTL's citation to *Dallman v. Ritter* does not compel a different conclusion. *See* Pl.'s Br. at 27 (citing 225 P.3d 610, 634-35 (Colo. 2010)). *Dallman* is neither binding nor persuasive authority. *See Dallman,* 225 P.3d at 634-35 (stating, in a conclusory fashion, that unions and corporations are "similarly situated" in the context of "preventing corruption in contracting"). IRTL's citation to *Dallman* is particularly unpersuasive because it conflicts with the Supreme Court's statement that "crucial differences" between corporations and unions can justify differing regulations. *See Austin v. Mich. Chamber of Commerce,* 494 U.S. 652 (1990), *overruled in part on other grounds by Citizens United,* 130 S.Ct. at 876; *see also Swanson,* 640 F.3d at 317 (rejecting the argument "that Minnesota's ban on direct corporate contributions violates the Equal Protection Clause of the Fourteenth Amendment because no legitimate governmental interest exists to justify imposing more stringent regulations on corporations than unions and other similar associations" and noting that "the Supreme Court in *Citizens United* did not consider this issue, and thus, did not overrule this portion of *Austin* ").

equal-protection claim where the record lacked sufficient evidence "to enable a meaningful comparison between [the plaintiff] and those he claims are similarly situated"). Because IRTL has failed to point to a single piece of evidence that supports an essential element of its Fourteenth Amendment claim, Defendants are entitled to judgment as a matter of law on Count Four of IRTL's complaint.

IV. CONCLUSION

For the foregoing reasons, "Plaintiff's Motion for Summary Judgment" (Clerk's No. 44) is DENIED IN PART and "Defendants' Motion for Summary Judgment" (Clerk's No. 45) is GRANTED IN PART. Specifically, Defendant's motion is granted and IRTL's motion is denied as to Counts Two, Three and Four of IRTL's complaint. The Court reserves ruling on the parties' cross--motions for summary judgment on Count One of IRTL's complaint until the Iowa Supreme Court rules on—or declines ***874** to answer—the statutory-interpretation questions certified in Section III(A), *supra.*

IT IS SO ORDERED.

Dated this 29th day of June, 2011.

/s/ Robert W. Pratt
ROBERT W. PRATT, Chief Judge
U.S. DISTRICT COURT

[Filed: 12/30/2011; Doc. 37]

IN THE SUPREME COURT OF IOWA

No.11-1068

Filed December 30, 2011

IOWA RIGHT TO LIFE COMMITTEE, INC.,
Plaintiff,
vs.
MEGAN TOOKER, In Her 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,
Defendants.

Certified questions of law from the United States Court for the Southern District of Iowa, Robert W. Pratt, Chief United States District Court Judge.

A federal district court certified two questions in a suit challenging the constitutionality of Iowa's campaign finance laws and regulations.

CERTIFIED QUESTIONS ANSWERED.

Sean P. Moore, Brian P. Rickert, and Adam C. Gregg of Brown, Winick, Graves, Gross, Baskerville & Schoenebaum, P.L.C., Des Moines, James Bopp, Jr., Richard E. Coleson, and Kaylan L. Phillips of Bopp, Coleson & Bostrom, Terre Haute, Indiana, for plaintiff.

Thomas J. Miller, Attorney General, Jeffrey S. Thompson, Deputy Attorney General, and Meghan L. Gavin, Assistant Attorney General, Des Moines, for

defendants.

MANSFIELD, Justice.

We have been asked to answer two certified questions of law in a federal case brought by Iowa Right to Life Committee, Inc. (IRTL) challenging the constitutionality of Iowa's campaign finance laws. The nub of the matter is whether a corporation must form a "political committee" under Iowa law if it wants to spend more than seven hundred fifty dollars advocating the election or defeat of Iowa candidates. Although Iowa's laws are not entirely clear (which explains the federal court's decision to certify), we conclude a corporation like IRTL may engage in express advocacy without forming a political committee.

The certified questions are as follows:

> 1. If a corporation that has not previously registered as a political committee makes independent expenditures aggregating over $750 in a calendar year, does that corporation become, by virtue of such expenditures: (1) an "independent expenditure committee," as that term is defined in Iowa Admin. Code r. 351—4.1(1)(d); (2) a "political committee," as that term is defined by Iowa Code § 68A. 102(18); or both?
>
> 2. If a corporation that has not previously registered as a political committee and that "was originally organized for purposes other than engaging in election activities" makes independent expenditures aggregating over $750 in a calendar year, does that corporation become, by virtue of such expenditures, a "permanent organization" pursuant to Iowa Code § 68A. 402(9)?

For the reasons discussed herein, we answer the questions as follows:

1. An independent expenditure committee.
2. No.

I. Factual Background and Procedural History.

According to its federal court complaint, IRTL is a nonprofit, nonstock Iowa corporation and the largest pro-life organization in Iowa. IRTL is exempt from federal taxes as a social welfare organization. 26 U.S.C. § 501(c)(4) (2006). IRTL alleges that its 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." IRTL's major purpose "is not and never will be the nomination or election of candidates."Nonetheless, in the wake of the U.S. Supreme Court's *Citizens United* decision holding that corporations have a First Amendment right to make independent expenditures ***419** expressly advocating the election or defeat of candidates,[1] IRTL seeks to make independent expenditures in Iowa to support candidates "who it believes will fight to protect issues that are important to its organization, such as protecting life."

IRTL alleges that it is unconstitutionally chilled from making such expenditures "due to the burdens imposed by [Iowa's laws and regulations] ... and the potential civil and criminal penalties for violating the challenged provisions." Among other things, IRTL al-

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[1] *See Citizens United v. Fed. Election Comm'n,* 558 U.S. 310, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010).

leges that if it made these kinds of expenditures, it would become a political committee (or PAC) under Iowa law, resulting in "onerous registration, reporting, and dissolution requirements."

On September 7, 2010, IRTL filed a four-count verified complaint in the United States District Court for the Southern District of Iowa. It named as defendants the executive director and the board members of the Iowa Ethics and Campaign Disclosure Board (Board).[2] Count I—the count at issue here—challenged Iowa Code sections 68A.102(18) and 68A.402(9) (2011), alleging they unconstitutionally imposed PAC status on corporations "whose major purpose is something other than nominating or electing candidates." Other counts (II–IV) attacked various Iowa statutes and administrative rules regarding the registration, reporting, and termination requirements for independent expenditure committees; Iowa's ban on corporate contributions to candidates and committees; and a newly enacted Iowa requirement that corporations making independent campaign expenditures obtain prior board of director approval for those expenditures.

IRTL initially filed a motion for preliminary injunction, which was denied by the district court on October 20, 2010. *Iowa Right to Life Comm., Inc. v. Smithson,* 750 F.Supp.2d 1020, 1049 (S.D. Iowa 2010). Both sides then moved for summary judgment. On June 29, 2011, the district court granted summary judgment for the Board on all counts except Count I. *Iowa Right to Life Comm., Inc. v. Tooker,* 795 F.Supp.2d 852, 873 (S.D. Iowa 2011).

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[2] The Board has the responsibility for administering Iowa's campaign finance laws. *See* Iowa Code § 68B.32A (describing the duties of the Board).

The district court reserved ruling on Count I because it had doubts about the proper interpretation of Iowa's election laws. *Id.* at 861–62. In particular, the court questioned the premise of IRTL's constitutional challenge, namely that IRTL would be deemed a "political committee" or PAC under sections 68A.102 (18) and 68A.402(9) if it made independent campaign expenditures. *Id.* To eliminate its uncertainty about the proper interpretation of Iowa law, the district court certified the aforementioned two questions to this court. *Id.* at 862.

II. Analysis.

A. Pre–*Citizens United* Statutory Background. Before we turn to the certified questions themselves, some historical background is appropriate. As this background reveals, as of January 2010, when *Citizens United* was decided, Iowa had (1) a ban on corporate expenditures in candidate elections dating back to 1975, (2) a definition of "political committee" that also went back to 1975 and had gone through several permutations, (3) a 1983 decision of this court holding that a nonprofit corporation engaged in a ballot issue campaign could be deemed a "political committee," and (4) a separate set of provisions that ***420** first entered the Iowa Code in 1994 and had undergone later modification allowing persons and entities to make and report "independent expenditures" in some circumstances without forming "political committees." Our story begins in 1907. In March of that year, Iowa enacted a ban on corporate contributions to political campaigns. It provided:

> It shall be unlawful for any corporation doing business within the state, or any officer, agent or representative thereof acting for such corpo-

> ration, to give or contribute any money, property, labor or thing of value, directly or indirectly, to any member of any political committee, political party, or employee or representative thereof, or to any candidate for any public office or candidate for nomination to any public office or to the representative of such candidate, for campaign expenses or for any political purpose whatsoever, or to any person, partnership or corporation for the purpose of influencing or causing such person, partnership or corporation to influence any elector of the state to vote for or against any candidate for public office or for nomination for public office or to any public officer for the purpose of influencing his official action, but nothing in this act shall be construed to restrain or abridge the liberty of the press or prohibit the consideration and discussion therein of candidacies, nomination, public officers or political questions.

1907 Iowa Acts ch. 73, § 1. This statute followed by approximately two months Congress's approval of a similar ban on corporate contributions to federal campaigns—the so-called Tillman Act. *See* ch. 420, 34 Stat. 864 (January 26, 1907) (making it "unlawful for any corporation whatever to make a money contribution in connection with any election at which Presidential and Vice–Presidential electors or a Representative in Congress is to be voted for or any election by any State legislature of a United States Senator").

However, comprehensive campaign finance legislation did not come to Iowa or the federal government until the 1970s, following the Watergate scandal. Iowa's first such campaign finance law was approved in 1973 and became chapter 56 of the Iowa Code. 1973

Iowa Acts ch. 138. At that time, the 1907 legislation was still on the books in the same form in which it had been enacted sixty-six years earlier. *See* Iowa Code § 491.69 (1973). The general assembly did not address corporate contributions (or expenditures) in the new law, simply leaving the 1907 legislation as it was and where it was. "Political committee" was defined in the new campaign finance law as follows:

> 'Political committee' means a person, including a candidate, or committee, including a statutory political committee, which accepts contributions or makes expenditures in the aggregate of more than one hundred dollars in any one calendar year for the purpose of supporting or opposing a candidate for public office.

1973 Iowa Acts ch. 138, § 3(6).

In 1975, the general assembly revised the campaign finance law that it had enacted just two years before. 1975 Iowa Acts ch. 57. At that time, the restrictions on corporate political activity dating back to 1907 were repealed and a modified version of them was placed in the campaign finance chapter. *Id.* § 17. Hence, a new provision regarding corporate political activity was inserted into chapter 56. This provision read in part:

> It shall be unlawful for any insurance company, savings and loan association, ***421** bank, and corporation organized pursuant to the laws of this state or any other state, territory, or foreign country, whether for profit or not, or any officer, agent, representative thereof acting for such insurance company, savings and loan association, bank, or corporation, to contribute any money, property, labor, or thing of

> value, directly or indirectly, to any committee, or for the purpose of influencing the vote of any elector.

Id. § 16. The 1975 legislation also replaced the prior definition of "political committee," so it now read as follows:

> 'Political committee' means a committee, but not a candidate's committee, which shall consist of persons organized for the purpose of accepting contributions, making expenditures, or incurring indebtedness in the aggregate of more than one hundred dollars in any one calendar year for the purpose of supporting or opposing a candidate for public office or ballot issue.

Id. § 5.

The following year, 1976, the legislature relaxed the restrictions on corporate activity somewhat by allowing for a few exceptions. First, it exempted expenditures in utility franchise elections from the basic prohibition. 1976 Iowa Acts ch. 1078, § 14(1). Second, it authorized corporations to sponsor political committees, by paying their administrative expenses, so long as the actual contributions to those committees came from certain individuals. *Id.* § 14(3). Third, it permitted nonprofit corporations to make "contributions to encourage registration of voters and participation in the political process, or to publicize public issues, or both," so long as the "contributions" were not used "to endorse or oppose any candidate for public office or support or oppose ballot issues." *Id.* § 14(4).

Still, the scope of the corporate restrictions was broad. Although the basic prohibition was aimed at "contributions," the definition of "contribution" in-

cluded a "transfer of money." Iowa Code § 56.2(4)(*a*) (1977). Also, a prohibited "contribution" did not have to be "to" a person or an entity, as under the 1907 legislation; it merely had to be "for the purpose of influencing the vote of any elector." *Id.* § 56.29(1). In addition, illegal "contributions" included "contributions" by nonprofit corporations "to endorse or oppose any candidate for public office." *Id.* § 56.29(4).

Thus, following the 1975 and 1976 revisions of Iowa campaign finance law, it appeared that the statutory ban on corporate campaign "contributions" included corporate campaign *expenditures* as well. The attorney general agreed with this view, issuing a formal opinion in 1977 that the Fort Dodge Chamber of Commerce could not "raise money and utilize their staff personnel to present one side of an election issue, specifically a proposal for a civic center." 1977 Op. Iowa Att'y. Gen. 307 (1978).

In 1978, however, the U.S. Supreme Court decided that corporations could not be constitutionally prohibited from spending money to influence ballot issue campaigns. *First Nat'l Bank of Boston v. Bellotti,* 435 U.S. 765, 795, 98 S.Ct. 1407, 1425, 55 L.Ed.2d 707, 730 (1978). Following the *Bellotti* decision, our attorney general reiterated his view that section 56.29 was indeed a corporate expenditure ban as well as a contribution ban and prohibits a corporation from taking a public position for or against a ballot issue, or from making a financial contribution to an organized effort to educate the public. 1978 Op. Iowa Att'y. Gen. 706 (1978). In light of *Bellotti,* though, he opined that this aspect of the statute "invades free speech territory ***422** the First Amendment has carved out as hallowed and sacrosanct from statutory infringement." *Id.* at 710.

In 1981, the general assembly responded to the

Bellotti decision by amending section 56.29 to expressly permit corporations to spend money on ballot issues, while providing that such expenditures remained subject to the disclosure requirements of the chapter. 1981 Iowa Acts ch. 35, § 14(1). At the same time, the legislature amended the definition of "political committee" once again:

> 'Political committee' means a committee, but not a candidate's committee, which ~~shall consist of persons organized for the purpose of accepting~~ accepts contributions, ~~making~~ makes expenditures, or ~~incurring~~ incurs indebtedness in the aggregate of more than ~~one~~ two hundred fifty dollars in any one calendar year for the purpose of supporting or opposing a candidate for public office or ballot issue.

Id. § 1(6). The legislature also added the concept of a "permanent organization":

> A permanent organization temporarily engaging in activity which would qualify it as a political committee 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 in accordance with this chapter. When the permanent organization ceases to be involved in the political activity, it shall dissolve the political committee.

Id. § 6.

In 1983, we had occasion to review and interpret the term "political committee," and found that it could include a nonprofit corporation. *Iowans for Tax Relief v. Campaign Fin. Disclosure Comm'n,* 331 N.W.2d 862, 865-67 (Iowa 1983), *appeal dismissed,* 464 U.S. 879,

104 S.Ct. 220, 78 L.Ed.2d 217 (1983). Following *Bellotti,* Iowans for Tax Relief (IFTR) organized a campaign for a constitutional convention to limit the general assembly's taxing and spending authority. *Id.* at 864. IFTR refused, however, to file disclosure reports showing its sources of funds on the ground it was not subject to chapter 56's reporting requirements. *Id.* When the case came before us, we held that IFTR, a nonprofit corporation, met the definition of a "political committee" under both the pre-1981 and the post-1981 statutory definitions and was subject to the reporting requirements for political committees. *Id.* at 865-67. We found that an entity could be "organized" for the purpose of supporting a ballot issue within the meaning of pre-1981 law even if that was not the entity's original purpose, its only purpose, or even its primary purpose. *Id.* at 865-66. We also held the 1981 amendment to the definition of "political committee" was merely "clarifying." *Id.* at 867.

As the years passed, other adjustments were made to Iowa's campaign finance laws. One significant change occurred in 1994 when the legislature introduced the concept of "independent expenditure" reporting. Originally, this applied to any person, "other than a political committee," that made expenditures in excess of five hundred dollars in a calendar year "for purposes of supporting or opposing a ballot issue." 1994 Iowa Acts ch. 1180, § 36(2).

In 1999, the legislature made amendments to reflect the difference between so-called "express advocacy" and so-called "issue advocacy." Thus, "political committee" was redefined to include, among other things:

> A committee, but not a candidate's committee, ~~which~~ that accepts contributions in excess of five hundred dollars in the aggregate, makes expenditures in excess ***423** of five hundred dollars in the aggregate, or incurs indebtedness in excess of five hundred dollars in the aggregate in any one calendar year ~~for the purpose of supporting or opposing~~ to expressly advocate the nomination, election, or defeat of a candidate for public office, or ~~for the purpose of supporting or opposing~~ to expressly advocate the passage or defeat of a ballot issue....

1999 Iowa Acts ch. 136, § 2. At the same time the legislature modified the ban on corporate campaign-related expenditures to limit it to those that expressly advocated the nomination, election, or defeat of a candidate:

> [It] is unlawful for an insurance company, savings and loan association, bank, credit union, or corporation organized pursuant to the laws of this state, the United States, or any other state, territory, or foreign country, whether for profit or not, or an officer, agent, or representative acting for such insurance company, savings and loan association, bank, credit union, or corporation, to contribute any money, property, labor, or thing of value, directly or indirectly, to a committee, or ~~for the purpose of influencing~~ to expressly advocate that the vote of an elector be used to nominate, elect, or defeat a candidate for public office....

Id. § 10(1). These provisions reflected existing U.S. Supreme Court precedent that corporations could be forbidden from spending their treasury funds to support the election or defeat of candidates, but could not be

prevented from spending money to publicize their positions on issues. *See Austin v. Mich. Chamber of Commerce,* 494 U.S. 652, 654-55, 110 S.Ct. 1391, 1395, 108 L.Ed.2d 652, 661 (1990) (upholding a Michigan law that prohibited the Michigan Chamber of Commerce from making independent expenditures to support the election of a candidate); *Bellotti,* 435 U.S. at 795, 98 S.Ct. at 1425, 55 L.Ed.2d at 730.

In 2003, the general assembly modified the independent expenditure provisions, providing that "individuals" who spent more than seven hundred fifty dollars in the aggregate to advocate the election or defeat of candidates would file an independent expenditure report in lieu of complying with the more cumbersome registration requirements for political committees. 2003 Iowa Acts ch. 40, § 4(2).[3] The Board was also given authority to adopt rules for the implementation of the independent expenditure provisions. *Id.* § 7(*b*). Then, in 2005, the independent expenditure provisions were made applicable to any "person," other than a registered committee. 2005 Iowa Acts ch. 72, § 14 (codified at Iowa Code § 68A.404(2) (2007)). In 2008, the reporting threshold was lowered to one hundred dollars in the aggregate. 2008 Iowa Acts ch. 1191, §§ 116, 117 (codified at Iowa Code §§ 68A.404(1), (3)(*a*) (2009)).

Thus, at the time *Citizens United* was decided in January 2010, it was illegal in Iowa for a corporation "to expressly advocate that the vote of an elector be used to nominate, elect, or defeat a candidate for public office." Iowa Code § 68A.503(1) (2009). However, Iowa law did allow individuals and other entities such as

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[3] In the same legislation, the campaign finance provisions were moved from chapter 56 to chapter 68A of the Iowa Code. 2003 Iowa Acts ch. 40, § 9.

unincorporated associations and unions to engage in these activities, and it permitted corporations to engage in express advocacy on ballot issues. Whenever the entity in question was a political committee, it became subject to certain registration, reporting, and dissolution obligations. According ***424** to the laws then in effect, a "political committee" included the following:

> 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.

Id. § 68A.102(18)(a).

Also, as had been the law since 1981, a "permanent organization temporarily engaging in activity described in section 68A.102, subsection 18," was required to "organize a political committee" and "keep the funds relating to that political activity segregated from its operating funds." *Id.* § 68A.402(9). As set forth in the relevant statute:

> *Permanent organizations.* A permanent organization temporarily engaging in 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 re-

> ports filed under this subsection shall identify the source of the original funds used for a contribution made to a candidate or a candidate's committee. 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.

Id.[4]

Yet Iowa law recognized that some persons and noncorporate entities and persons could make independent expenditures expressly advocating the nomination, election, or defeat of one or more candidates without becoming, or being required to organize, a political committee. Thus, section 68A.404, entitled "Independent expenditures," provided in part:

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[4] The rule that the Board adopted to implement this provision read, in relevant part:

> *Permanent organizations temporarily engaging in political activity.* The requirement to file the statement of organization applies to an entity that comes under the definition of a "political committee" (PAC) in Iowa Code Supplement section 68A.102(18) by receiving contributions, making expenditures, or incurring debts in excess of $750 in any one calendar year for the purpose of expressly advocating the election or defeat of a candidate for public office, or for the purpose of expressly advocating the passage or defeat of a ballot issue.

Iowa Admin. Code r. 351—4.1(1)(*c*).

> 1. As used in this section, "*independent expenditure*" means one or more expenditures in excess of one hundred dollars in the aggregate for a communication that expressly advocates the nomination, election, or defeat of a clearly identified candidate or the passage or defeat of a ballot issue that is made without the prior approval or coordination with a candidate, candidate's committee, or a ballot issue committee.
>
> 2. A person, other than a committee registered under this chapter, that makes one or more independent expenditures shall file an independent expenditure statement.
>
> *a.* The requirement to file an independent expenditure statement under ***425** this section does not by itself mean that the person filing the independent expenditure statement is required to register and file reports under sections 68A.201 and 68A.402.
>
> *b.* This section does not apply to a candidate, candidate's committee, state statutory political committee, county statutory political committee, or a political committee.

Logically, it would appear that section 68A.404's less onerous obligation of merely filing an independent expenditure statement applied in at least one circumstance: where the person or entity had reached only the one hundred dollar threshold of section 68A.404(1) rather than the seven hundred fifty dollar threshold of section 68A.102(18). Whether it applied in other circumstances was less clear.

B. Post-*Citizens United* Legislation. On January 21, 2010, the U.S. Supreme Court decided *Citizens*

United. See 558 U.S. 310, 130 S.Ct. 876, 175 L.Ed.2d 753 (overruling *Austin*). That case was brought by a nonprofit corporation—Citizens United—that produced and sought to pay to air a film critical of presidential candidate Hillary Clinton. *Id.* at ——, 130 S.Ct. at 886-88, 175 L.Ed.2d at 769-70. Federal law at the time, like Iowa law, prohibited corporations from using general treasury funds to make independent expenditures that expressly advocated the election or defeat of a candidate for federal office. *See* 2 U.S.C. 441b (2006). The Court found the ban on such expenditures unconstitutional. It held that "the Government may not suppress political speech on the basis of the speaker's corporate identity." *Citizens United,* at ——, 130 S.Ct. at 913, 175 L.Ed.2d at 798-99.

In response to *Citizens United,* in March 2010, our general assembly approved S.F. 2354. It was signed by the governor on April 8, 2010, and, as emergency legislation, took effect immediately. 2010 Iowa Acts ch. 1119, § 7. This law rewrote section 68A.503 of the Iowa Code to remove the prohibition on corporate independent campaign expenditures and to expressly allow a corporation to "us[e] its funds for independent expenditures as provided in section 68A.404." *Id.* § 5(4)(*d*).

The law also rewrote section 68A.404 regarding independent expenditures. *Id.* § 3. Among other things, the one hundred dollar threshold for filing "independent expenditure statements" was raised to seven hundred fifty dollars. *Id.* § 3(1). A requirement that the independent expenditure be authorized by "the entity's board of directors, executive council, or similar organizational leadership body" was added. *Id.* § 3(2). The previous requirement that a "person, other than a committee registered under this chapter, that makes one or more independent expenditures shall file an inde-

pendent expenditure statement" was continued. *Id.* § 3(3). The proviso that section 68A.404 "does not apply to ... a political committee" was also continued. *Id.* § 3(3)(*b*). And various modifications were made to the independent expenditure reporting itself. *Id.* § 3(4).

Following the adoption of S.F. 2354, the Board adopted regulations to implement it. Among other things, the regulations defined an "independent expenditure committee" as a "person" that is required to file an "independent expenditure statement." Iowa Admin. Code r. 351—4.1(1)(*d*).[5] ***426**

C. The Parties' Positions. The parties' differences center on the interplay among "political committees," "permanent organizations," and "independent expenditures" in current, post-*Citizens United* Iowa election law.

IRTL argues that if it spends over seven hundred fifty dollars to advocate for the election or defeat of candidates in Iowa, it is required by either section 68A.102(18) or 68A.402(9) (or both) to organize a political committee. *See* Iowa Code § 68A.102(18)(*a*) (provid-

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[5] The entire subpart reads as follows:

> *Independent expenditure committee.* A person that is required to file campaign disclosure reports pursuant to 2009 Iowa Code Supplement section 68A.404(3) "*a*" as amended by 2010 Iowa Acts, Senate File 2354, section 3, due to the filing of an independent expenditure statement (Form Ind–Exp–O) shall be referred to as an "independent expenditure committee." An independent expenditure committee, or a sole individual making an independent expenditure by filing Form Ind–Exp–I, is not required to file a statement of organization.

Iowa Admin. Code r. 351—4.1(1)(*d*).

ing that a political committee includes a "committee, but not a candidate's committee, that ... makes expenditures in excess of seven hundred fifty dollars in the aggregate ... 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"); Iowa Code § 68A.402(9) (providing that a "permanent organization temporarily engaging in 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").[6] In IRTL's view, this "you must form a PAC to play" requirement is unconstitutional. As pointed out by the federal district court, "IRTL's arguments regarding Count One are all premised upon IRTL's assertion that if it makes its intended independent expenditures, it 'will be defined by statute as a political committee under Iowa law.' "

IRTL contends that under the 2010 amendment to section 68A.404, it *also* becomes an "independent expenditure committee" if it spends in excess of seven hundred fifty dollars expressly advocating the nomina-

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[6] IRTL's argument based on section 68A.102(18) has to deal with a certain degree of circularity in the statute. Under section 68A.102(18)(*a*), "political committee" includes a "committee, but not a candidate's committee," that spends more than seven hundred fifty dollars on express advocacy. To find out what "committee" means, we turn to section 68A.102(8), which unhelpfully explains that this term "includes a political committee and a candidate's committee." However, IRTL's argument based on section 68A. 402(9) avoids this circularity, since "permanent organization" has a separate definition not tied to the definition of "political committee."

tion, election, or defeat of candidates. As IRTL puts it:

> Under Iowa's scheme, the "independent expenditure committee" definition overlaps the "political committee" definition 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 an 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).

However, IRTL does not argue in Count I of its complaint that the burdens of becoming an "independent expenditure committee" are unconstitutional. Its sole objection is to the obligations associated with being a "political committee."

The Board differs with IRTL's overall reading of current law. The Board does agree that if a corporation makes independent expenditures aggregating over seven hundred fifty dollars, it becomes an independent expenditure committee under Iowa Code section 68A.404(3). The Board ***427** denies, however, that such an organization would qualify as a political committee under section 68A.102(18). Indeed, the Board contends the two categories are exclusive under Iowa law.

D. This Court's Discretion to Answer Certified Questions. At the outset, IRTL urges us not to answer the district court's two certified questions. IRTL argues that if we were to answer them constitutionally, we "would be forced to substantially re-write the provisions or strike them down in their entirety, and in both instances, render the provisions meaningless."

We recognize that this court has discretion in answering certified questions. Iowa Code section 684A.1 provides:

> The supreme court *may answer* questions of law certified to it by the supreme court of the United States, a court of appeals of the United States, a United States district court or the highest appellate court or the intermediate appellate court of another state, when requested by the certifying court, if there are involved in a proceeding before it questions of law of this state which may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the appellate courts of this state.

(Emphasis added.) *See also Foley v. Argosy Gaming Co.,* 688 N.W.2d 244, 246 (Iowa 2004) (recognizing the court's discretion whether to answer certified questions).

We choose to answer the certified questions here. We do not have a situation where the answers to the questions are fact-dependent or the facts are in conflict. *See Bituminous Cas. Corp. v. Sand Livestock Sys., Inc.,* 728 N.W.2d 216, 222 (Iowa 2007) (declining to answer a question of fact); *Wright v. Brooke Group Ltd.,* 652 N.W.2d 159, 170 n.1 (Iowa 2002) (declining to answer questions that require factual determinations); *Eley v. Pizza Hut of Am., Inc.,* 500 N.W.2d 61, 64 (Iowa 1993) (declining to answer questions where the stated facts are in conflict and could be a basis for the court to answer the questions in a variety of ways). These are pure questions of law.

Also, our answers to these questions will allow the federal district court to decide the remaining issues in a case with constitutional dimensions. The certified questions are not "purely academic or extraneous." *FDIC v. Am. Cas. Co. of Reading, Pa.,* 528 N.W.2d 605, 607 (Iowa 1995) (recognizing the court "should reject purely academic or extraneous questions").

The only ground offered by IRTL for not exercising our discretion to answer the questions assumes we will agree with IRTL's views on both constitutionality and statutory interpretation. This kind of question-begging does not advance the analysis, in our view. In the absence of a good reason *not* to answer the certified questions, we will now proceed to respond to the inquiries presented to us.

E. Answering the Certified Questions. The first certified question asks whether a corporation that makes independent expenditures aggregating over seven hundred fifty dollars in a calendar year becomes, by virtue of such expenditures, an "independent expenditure committee," a "political committee," or both. The second asks whether a corporation making independent expenditures at this level becomes a "permanent organization" that must form a "political committee." For the reasons we have already discussed, the questions are interrelated.

We agree there is some degree of conflict in the statutes. Under section ***428** 68A.402(9), which predates *Citizens United,* it appears that IRTL would qualify as a permanent organization in that it is "continuing, stable, and enduring, and ... originally organized for purposes other than engaging in election activities." Thus, if that provision were viewed in isolation, IRTL would apparently have to "organize a political committee" as soon as it temporarily engaged in

activity covered by section 68A.102(18), e.g., spending in excess of seven hundred fifty dollars to expressly advocate the nomination, election, or defeat of a candidate. *See* Iowa Code §§ 68A.102(18), 68A.402(9).

Also, twenty-eight years ago, when we were asked to interpret the predecessors to sections 68A.102(18)(*a*) and 68A.402(9), we held that Iowans for Tax Relief became subject to the "political committee" reporting requirements once it established a ballot issue committee to conduct a campaign for passage of the constitutional convention issue. *Iowans for Tax Relief,* 331 N.W.2d at 865-67.

On the other hand, under the post-*Citizens United* legislation, if IRTL spends over seven hundred fifty dollars to engage in express advocacy, it becomes an entity making independent expenditures, defined under the regulations as an "independent expenditure committee." *See* Iowa Code § 68A.404(1), (3); Iowa Admin. Code r. 351—4.1(4)(*d*). And this section of chapter 68A makes clear that it does not apply to political committees. Iowa Code § 68A.404(3)(*b*) ("This section does not apply to ... a political committee."). In other words, according to this part of the law, "independent expenditure committee" and "political committee" are two mutually exclusive categories.

So we are faced with a situation where if we apply sections 68A.102(18) and 68A.402(9) in isolation, IRTL would be treated as a political committee or a permanent organization that has to form a political committee, whereas if we apply section 68A.404 in isolation, IRTL would become an independent expenditure committee, which precludes it from being a political committee.

Of course, we do not interpret statutes in isolation, especially when they are in apparent conflict. Before

Citizens United was decided, as we have noted, it was generally illegal for corporations to spend money expressly advocating the election or defeat of Iowa candidates. *See* Iowa Code § 68A.503(1) (2009). In 2010, following the *Citizens United* decision, the general assembly lifted the ban on corporate express advocacy, by providing that corporations could engage in "independent expenditures as provided in section 68A.404." *See* 2010 Iowa Acts ch. 1119 § 5(4)(*d*). Section 68A.404, of course, is the independent expenditure provision in chapter 68A. Simultaneously, the same legislation amended section 68A.404 to require authorization by the corporate board of directors for any such independent expenditure. *See id.* § 3(2). Several other changes to section 68A.404 were made as well, but the provision that it did not apply to political committees was reenacted and continued. *Id.* § 3(3)(*b*).

Reading the 2010 legislation as a whole, the legislature's intent was to allow corporations like IRTL a pathway to engage in express advocacy under the preexisting independent expenditure provisions of section 68A.404, while also revising some other aspects of that section. There is no indication the legislature contemplated that such advocacy would fall within sections 68A.402(9) and 68A.102(18). The general assembly did not say that corporations could use their funds for independent expenditures "as provided in" section 68A.402(9), section 68A.102(18) or any of ***429** the sections relating to political committees. It referenced section 68A.404 alone.

True, we held in 1983 in *Iowans for Tax Relief* that nonprofit corporations could become political committees even if their involvement in ballot issue advocacy was "secondary" and not their original or primary purpose. 331 N.W.2d at 865-67. But at the time we decided

that case, the "independent expenditure" vehicle did not exist. The legislature did not enact the "independent expenditure" provisions until 1994. And when the legislature decided to rework its campaign finance laws in 2010 in light of *Citizens United,* it threw out the old ban on corporate express advocacy and said, explicitly, that a corporation could "us[e] its funds for independent expenditures as provided in section 68A.404." 2010 Iowa Acts ch. 1119, § 5(4)(*d*). Because S.F. 2354 only referenced section 68A.404, and because section 68A.404 by its terms cannot apply to political committees, we believe the effect of the legislation is to permit corporations like IRTL to engage in express advocacy for or against candidates without becoming political committees so long as they comply with section 68A.404.

"'The polestar of statutory interpretation is to give effect to the legislative intent of a statute.'" *Rolfe State Bank v. Gunderson,* 794 N.W.2d 561, 565 (Iowa 2011) (quoting *Klinge v. Bentien,* 725 N.W.2d 13, 18 (Iowa 2006)). "In determining legislative intent, we avoid placing undue importance on isolated portions of an enactment by construing all parts of the enactment together." *Id.* We conclude the legislature made a choice in 2010 to permit corporate express advocacy in elections while having it regulated through the independent expenditure provisions of section 68A.404.

Several other points bolster this conclusion, in our view. First, where statutes are in conflict, the later-enacted provisions (here those of 2010 Iowa Acts chapter 1119) take precedence. Iowa Code § 4.8 ("If statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment by the general assembly prevails."); *see also Toomey v. Surgical Servs., P.C.,* 558 N.W.2d 166, 170 (Iowa 1997) (applying this rule of construction).

Second, the definitional section of chapter 68A, *see* Iowa Code section 68A.102, which includes the definition of "political committee," *id.* section 68A.102(18), contains an escape hatch. The definitions apply "unless the context otherwise requires." *Id.* § 68A.102. This suggests that IRTL does not become (or have to form) a political committee when the context indicates a different result would be appropriate—i.e., treatment of IRTL as an "independent expenditure committee" pursuant to section 68A.404.

Third, the Board—in an advisory opinion—has said that a corporation making independent expenditures becomes an independent expenditure committee but not a political committee. *See* IECDB AO 2010–03 (April 29, 2010) (stating that a corporation that makes independent expenditures above the threshold becomes an "independent expenditure committee" but "will not be subject to the same registration and reporting requirements as a PAC"). Notably, within Iowa Code section 68A.404, the independent expenditure section of the Code, there is express authority for the Board to "adopt rules pursuant to chapter 17A for the implementation of this section." Iowa Code § 68A.404(8)(*b*). This subsection was reenacted and continued in the legislation that was adopted in the wake of *Citizens United*. *See* 2010 Iowa Acts ch. 1119, § 3(8)(*b*). We believe this grant of rulemaking authority requires us to give deference ***430** to the Board's administrative determination, in implementing section 68A.404, that corporate expenditures on express advocacy trigger an independent expenditure reporting requirement under section 68A.404 as opposed to PAC status under sections 68A.102(18) and 68A.402(9). *See generally* Iowa Code § 17A.19(10); *Renda v. Iowa Civil Rights Comm'n,* 784 N.W.2d 8, 10-14 (Iowa 2010) (discussing at length

when interpretative discretion has clearly been vested in an agency).

Fourth, the prior versions of S.F. 2354 were quite restrictive, even though they too operated through section 68A.404. In theory, corporations would have been permitted to engage in express advocacy, in accordance with *Citizens United.* Yet the earlier proposals would have tightened that section in various other ways. For example, the study bill would have amended section 68A.404 to prohibit independent expenditures by any person who was a "party to a contract with the state of Iowa" or by any for-profit corporation that "receives money from the state or federal government." *See* S. Study B. 3210, 83rd G.A., 2nd Sess. § 1. Additionally, both the study bill and the first version of S.F. 2354 introduced in February 2010 would have required a corporation making an independent expenditure to disclose the names and addresses of all of its individual shareholders, including the names and addresses of individual shareholders of any parent corporation. *See id.;* S.F. 2354, 83rd G.A., 2nd Sess. § 1. Both proposals also would have left the threshold for triggering "independent expenditure" status at one hundred dollars, instead of increasing it to seven hundred fifty dollars. *See* S. Study B. 3210, 83rd G.A., 2nd Sess. § 1; S.F. 2354, 83rd G.A., 2nd Sess. § 1. These restrictions fell out of the final version of the legislation, but the reliance on section 68A.404 as the regulatory vehicle remained. This legislative history supports our conclusion that the legislature believed that section 68A.404 was an adequate mechanism for regulating corporate express advocacy, without also resorting to the "political committee" provisions of chapter 68A.

III. Conclusion.

Accordingly, we agree with the Board that a corpo-

ration making independent expenditures aggregating over seven hundred fifty dollars in a calendar year becomes an "independent expenditure committee" within the meaning of section 68A.404 but not a "political committee" within the meaning of section 68A.102(18) or a "permanent organization" within the meaning of section 68A.402(9).[7]

CERTIFIED QUESTIONS ANSWERED.

All justices concur except Appel, J., who takes no part.

[7] This conclusion applies to corporations whose primary or major purpose is *not* the type of activity described in section 68A.102(18). As we have previously discussed, IRTL alleges it is such a corporation. We do not hold today that a corporation primarily engaged in campaign activities can avoid political committee status simply because it happens to be a corporation rather than an unincorporated association. We leave that decision for another day.

[Filed: 2/7/2012; Doc. 59]

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

IOWA RIGHT TO LIFE COMMITTEE, INC., Plaintiff, v. MEGAN TOOKER, in her 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, Defendants.	4:10-cv-416 RP-TJS MEMORANDUM OPINION AND ORDER

Currently before the Court are portions of two pending motions for summary judgment. The first motion was filed by Iowa Right to Life Committee, Inc. ("IRTL") on January 14, 2011. Clerk's No. 44. The above-captioned government officials (collectively, "Defendants") filed a response on February 4, 2011. Clerk's No. 47. IRTL filed a reply on February 11, 2011. Clerk's No. 50. The second motion was filed by Defendants on January 14, 2011. Clerk's No. 45. IRTL filed a response on February 4, 2011. Clerk's No. 48. Defendants filed a reply on February 11, 2011. Clerk's No. 49. The matters are fully submitted. ***947**

I. FACTUAL & PROCEDURAL BACKGROUND

The Court ruled, in part, on the instant motions on June 29, 2011.[1] 795 F.Supp.2d 852 (S.D.Iowa 2011). However, the Court reserved ruling on the portions of those motions relating to Count One of IRTL's complaint until the Iowa Supreme Court ruled on—or declined to answer—the statutory-interpretation questions certified in Section III(A) of that order. *Id.* at 873–74. On December 30, 2011, the Iowa Supreme Court issued an opinion answering the certified questions. *See Iowa Right to Life Comm. v. Tooker,* 808 N.W.2d 417 (Iowa 2011). On February 7, 2012, the Court received a certified copy of that decision from the Iowa Supreme Court. *See* Clerk's No. 58.

II. STANDARD FOR SUMMARY JUDGMENT

Under Federal Rule of Civil Procedure 56(a), "[a] party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought." Summary judgment can be entered against a party if that party fails to make a showing sufficient to establish the existence of an element essential to its case, and on which that party will bear the burden of proof at trial. *See Celotex Corp. v. Catrett,* 477 U.S. 317, 322 (1986). Summary judgment is appropriately granted when the record, viewed in the light most favorable to the nonmoving party and giving that party the benefit of all reasonable inferences, shows that there is no genuine issue of material fact, and that the moving party is therefore entitled to judgment as a matter of law. *Harlston v. McDonnell Douglas Corp.,* 37 F.3d 379, 382

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[1] The Court assumes the reader's familiarity with that order and will not repeat the facts or analysis recited therein.

(8th Cir. 1994). The Court does not weigh the evidence, nor does it make credibility determinations. The Court only determines whether there are any disputed issues and, if so, whether those issues are both genuine and material. *See Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 252 (1986); *Wilson v. Myers,* 823 F.2d 253, 256 (8th Cir. 1987) ("Summary judgment is not designed to weed out dubious claims, but to eliminate those claims with no basis in material fact.") (citing *Weight Watchers of Quebec, Ltd. v. Weight Watchers Int'l, Inc.,* 398 F.Supp. 1047, 1055 (E.D.N.Y.1975)).

In a summary judgment motion, the moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact based on the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits, if any. *See Celotex,* 477 U.S. at 323; *Anderson,* 477 U.S. at 248. If the moving party has carried its burden, the nonmoving party must then go beyond its original pleadings and designate specific facts showing that there remains a genuine issue of material fact that needs to be resolved by a trial. *See Commercial Union Ins. Co. v. Schmidt,* 967 F.2d 270, 271 (8th Cir. 1992); *see also* Fed. R. Civ. P. 56(c). This additional showing can be by affidavits, depositions, answers to interrogatories, or the admissions on file. *See Celotex,* 477 U.S. at 322-23; *Anderson,* 477 U.S. at 257. "[T]he mere existence of *some* alleged factual dispute between the parties will not defeat a motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson,* 477 U.S. at 247-48. An issue is "genuine" if the ***948** evidence is sufficient to persuade a reasonable jury to return a verdict for the nonmoving party. *See id.* at 248. "As to materiality, the substantive law will identify which facts are material.... Factual disputes that

are irrelevant or unnecessary will not be counted." *Id.*

III. LAW AND ANALYSIS

In Count One, IRTL challenges Iowa Code §§ 68A.102(18) and 68A.402(9). Compl. ¶ 23. IRTL argues that these provisions "unconstitutionally impose[] political-committee ('PAC') status on groups whose major purpose is not the nomination or election of candidates."[2] Pl.'s Br. in Supp. of Mot. for Summ. J. (hereinafter "Pl.'s Br.") at 3 (Clerk's No. 44–1).

The first challenged provision defines "political committee" as follows:

> 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

[2] IRTL does not allege that this provision is facially invalid; rather, it alleges that it is unconstitutional as applied to IRTL and similar groups. *See* Compl. ¶ 28.

> 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 subsection 4.

Iowa Code § 68A.102(18). The term "'[c]ommittee' includes a political committee and a candidate's committee." *Id.* § 68A.102(8). These definitions apply to Iowa's campaign finance laws "unless the context otherwise requires." *Id.* § 68A.102. The second challenged provision provides:

> A permanent organization temporarily engaging in 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 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 ***949** organized for purposes other than engaging in election activities.

Id. § 68A.402(9).

Essentially, IRTL argues that if it makes an independent expenditure, it will be defined by statute—and thus open to potential regulation—as both a political committee and a permanent organization.[3] *E.g.,* Compl. ¶ 18; *see also* 795 F.Supp.2d at 860 ("IRTL's arguments regarding Count One are all premised upon IRTL's assertion that if it makes its intended independent expenditures, it 'will be defined by statute as a political committee under Iowa law.'" (footnote omitted) (quoting Compl. ¶ 18)). Defendants argue that if IRTL makes an independent expenditure, it will be regulated as an independent expenditure committee,[4] not a politi-

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[3] An "independent expenditure" is:

> One or more expenditures in excess of seven hundred fifty dollars in the aggregate for a communication that expressly advocates the nomination, election, or defeat of a clearly identified candidate or the passage or defeat of a ballot issue that is made without the prior approval or coordination with a candidate, candidate's committee, or a ballot issue committee.

Iowa Code § 68A.404(1).

[4] The Iowa Ethics and Campaign Disclosure Board refers to organizations that are required to file independent expenditure statements under this section as "independent

cal committee or permanent organization. *See* Defs.' Br. in Supp. of Mot. for Summ. J. (hereinafter "Defs.' Br.") at 7 (Clerk's No. 45-1) (arguing that the challenged provisions "do not impose PAC status on IRTL for making an independent expenditure"); *see also* Defs.' Resp. to Pl.'s Mot. for Prelim. Inj. (hereinafter "Defs.' PI Br.") at 5-6 (Clerk's No. 20).

Due to ambiguities regarding the interplay of certain provisions of the Iowa Code, the Court certified two questions to the Iowa Supreme Court, specifically:

> 1) If a corporation that has not previously registered as a political committee makes independent expenditures aggregating over $750 in a calendar year, does that corporation become, by virtue of such expenditures: (1) an "independent expenditure committee," as that term is defined in Iowa Admin. Code r. 351–4.1(1)(d); (2) a "political committee," as that term is defined by Iowa Code § 68A.102(18); or (3) both?
>
> 2) If a corporation that has not previously registered as a political committee and that "was originally organized for purposes other than engaging in election activities" makes independent expenditures aggregating over $750 in a calendar year, does that corporation become, by virtue of such expenditures, a "permanent organization" pursuant to Iowa Code § 68A.402(9)?

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expenditure committees." *See* Iowa Admin. Code r. 351–4.1(1)(d). The Court adopts the Board's definition of "independent expenditure committee" for the purposes of this order.

795 F.Supp.2d at 862.

In a thoughtful and well-reasoned opinion by Justice Mansfield, the Iowa Supreme Court answered these two questions as follows:

1. An independent expenditure committee.

2. No.

Clerk's No. 58 at 3. According to the Iowa Supreme Court, if a corporation like IRTL makes "independent expenditures aggregating over seven hundred fifty dollars in a calendar year," it "becomes an 'independent expenditure committee' within the meaning of section 68A.404 but not a 'political committee' within the meaning of section 68A.102(18) or a 'permanent organization' within the meaning of section 68A.402(9)." *Id.* at 25. ***950**

In light of this ruling, IRTL's claim that it could be classified—or regulated—as a political committee or a permanent organization simply by making independent expenditures fails as a matter of law. Accordingly, IRTL has no standing to challenge the definitions of "political committee" and "permanent organization." *See generally Zanders v. Swanson,* 573 F.3d 591, 593 (8th Cir. 2009) ("[I]n the First Amendment context, even though Plaintiffs are not required to await and undergo a criminal prosecution, they *must face a credible threat of present or future prosecution* under the statute for a claimed chilling effect to confer standing ...." (emphasis added)). Thus, Defendants are entitled to summary judgment on Count One.

IV. CONCLUSION

For the foregoing reasons, the portion of "Plaintiff's Motion for Summary Judgment" (Clerk's No. 44) pertaining to Count One is DENIED and the portion of

"Defendants' Motion for Summary Judgment" (Clerk's No. 45) pertaining to Count One is GRANTED. The Clerk of Court shall enter judgment for Defendants and against IRTL on all claims.[5]

IT IS SO ORDERED.

/s/ Robert W. Pratt
ROBERT W. PRATT, Chief Judge
U.S. DISTRICT COURT

[5] The Court is aware that the parties filed a "notice" that discusses costs on February 2, 2012. Clerk's No. 57. However, because no party has filed either a bill of costs or a motion regarding costs, any arguments regarding costs are not before the Court. *See generally* LR 7(a), 54.

[Case: 12-1605; Date Filed: 07/19/2013;
Entry ID: 4056741]

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 12-1605

Iowa Right To Life Committee, Inc.
Appellant

v.

Megan Tooker, in her official capacity as Iowa Ethics and Campaign Disclosure Board Executive Director, et al.
Appellees

Appeal from U.S. District Court for the Southern District of Iowa - Des Moines
(4:10-cv-00416-RP)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

July 19, 2013

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Constitutional Provisions

U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statute

Iowa Code 68A.503. Financial institution, insurance company, and corporation restrictions

1. Except as provided in subsections 3, 4, 5, and 6, an insurance company, savings 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 association, bank, credit union, or corporation.
3. An insurance company, savings association, bank, credit union, or corporation may use money, property, labor, or any other 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 an insurance company, savings association, bank, credit union, or corporation as permitted by this subsection.
4. The prohibitions in subsections 1 and 2 shall not apply to an insurance company, savings associa-

tion, bank, credit union, or corporation engaged in 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 for independent expenditures as provided in section 68A.404.

d. Using its funds to place campaign signs as permitted under section 68A.406.

5. a. The prohibitions in subsections 1 and 2 shall not apply to media organizations when discussing candidates, nominations, public officers, or public questions.

b. Notwithstanding paragraph "a", the board shall adopt rules requiring the owner, publisher, or editor of a sham newspaper that promotes in any way the candidacy of a person for any public office to comply with this section and section 68A.404. As used in this subsection, "sham newspaper" means a newspaper publication that is published for the primary purpose of evading the requirements of this section or section 68A.404, and "owner" means a person having an ownership interest exceeding ten percent of the equity or profits of the publication.

6. The prohibitions in subsections 1 and 2 shall not apply to a nonprofit organization communicating with its own members. The board shall adopt rules pursuant to chapter 17A to administer this subsection.

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.