No. 13-407

In The Supreme Court of the United States

IOWA RIGHT TO LIFE COMMITTEE, INC.,

Petitioner,

v.

MEGAN TOOKER, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

THOMAS J. MILLER
Attorney General of Iowa

JULIE F. POTTORFF*
Deputy Attorney General

JEFFREY S. THOMPSON
Deputy Attorney General

MEGHAN GAVIN
Assistant Attorney General
1305 E. Walnut Street
Des Moines, IA 50319
(515) 281-5166
Julie.Pottorff@iowa.gov

Attorneys for Respondents

**Counsel of Record*

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

COUNTER-STATEMENT OF QUESTION PRESENTED FOR REVIEW

Whether Iowa's ban on corporate and related business entities' contributions is unconstitutional in light of *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), and because Iowa Code section 68A.503 (2011) does not explicitly ban union contributions as well?

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OPINIONS AND ORDERS BELOW

The Respondents accept the Petitioner's statement regarding the opinions and orders below.

JURISDICTION

The Respondents accept the Petitioner's statement regarding the Court's jurisdiction over the matter.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Respondents accept the Petitioner's statement regarding the constitutional and statutory provisions at issue in this case with one correction. During the pendency of this litigation, Iowa Code section 68A.503 was amended. *See* 2012 Iowa Acts, ch. 1017. The version of the statute included on page 190a of the Appendix is the current incarnation and not the version applicable when the litigation was filed. The Respondents do not believe, however, that the 2012 amendments alter the substantive issues presented in this case.

STATEMENT OF THE CASE

The Respondents generally accept the Petitioner's statement of the case with one exception. As will

be discussed below, Respondents do not believe a conflict exists between the Eighth Circuit's en banc decision in *Minnesota Citizens Concerned for Life v. Swanson*, 692 F.3d 864 (8th Cir. 2012) [hereinafter *MCCL*], and the decision below, *Iowa Right to Life Committee, Inc. v. Tooker*, 717 F.3d 576 (8th Cir. 2013) [hereinafter *IRTL*].

REASONS FOR DENYING THE PETITION

In a direct response to this Court's decision in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), the Iowa General Assembly enacted Senate File 2354. 2010 Iowa Acts, ch. 1119. The multi-faceted law attempted to quickly reconcile Iowa's campaign financing scheme with federal law. *Iowa Right to Life Comm., Inc. v. Tooker*, 808 N.W.2d 417, 425 (Iowa 2011). The emergency legislation was signed into law on April 8, 2010 and was effective immediately. *Id.*

Six months later, the Petitioner filed a four-count complaint challenging numerous, unique aspects of Iowa's campaign financing scheme, including reporting requirements for independent expenditures and an alleged ambiguity in whether a corporation would qualify as a political action committee or an independent expenditure committee. The complaint further challenged Iowa's ban on corporate contributions. After several district court opinions, certified questions to the Iowa Supreme Court, and Eighth

Circuit review, Petitioner has now confined its challenge solely to Iowa's corporate contribution ban – alleging the ban violates both freedom of speech and equal protection, the latter for the statute's failure to also ban union contributions.

Unlike many aspects of Iowa's campaign financing scheme, its ban on corporate contributions enjoys a rich history. The United States Congress first barred corporations from making direct contributions to political candidates over one hundred years ago with passage of the Tiliman Act. *Fed. Election Comm'n v. Beaumont*, 539 U.S. 146, 149 (2003). Iowa followed the federal example in 1907 – banning all corporate contributions. 1907 Iowa Acts, ch. 73, § 1; *IRTL*, 808 N.W.2d at 420. Iowa law remained unchanged until 1975, when the Iowa General Assembly repealed Iowa's corporate contribution ban and replaced it with a contribution ban on insurance companies, savings and loan associations, banks, *and* corporations. 1975 Iowa Acts, ch. 57, § 16. Iowa's ban has remained substantively unchanged for nearly forty years.

Federal law has long banned corporate contributions and this Court has long upheld the ban's constitutionality. *Beaumont*, 539 U.S. at 163. Petitioner seeks an end-run around this history and a second chance to argue issues raised to and decided by this Court more than a decade ago. Instead of attacking this precedent head on, the Petitioner seeks to bootstrap evolutions in campaign financing law related to corporate independent expenditures and apply that

rationale to corporate contributions. In doing so, the Petitioner ignores that for almost four decades this Court has recognized a distinction between contributions and independent expenditures. *See Buckley v. Valeo*, 424 U.S. 1, 20 (1976).

In an attempt to bolster the weight and significance of its Petition, the Petitioner manufactures an *intra*-circuit conflict within the Eighth Circuit where none exists, ignores the clear precedent of this Court, and attempts to use Iowa's unique statute to mount a national challenge to corporate contribution bans. The Petitioner has failed to present a compelling justification for grant of certiorari. This is simply not the right time, and more importantly not the right case, to reassess Iowa's century-old ban on corporate contributions.

I. No Conflict Exists Between the Eighth Circuit's Decision Upholding Iowa's Ban on Corporate Contributions and Other Decisions Post-*Citizens United*.

The Petitioner engages in legal gymnastics to claim a conflict exists either at the circuit or state level with the panel's decision justifying this Court's intervention. Any review demonstrates that lower courts are applying this Court's precedent consistently and correctly. Without this conflict, the traditional reasons proffered by the Petitioner for granting certiorari evaporate.

First, the Petitioner claims an *intra*-circuit split exists between the panel's decision and the en banc decision in *MCCL*. Petition at 7. Assuming such a conflict is even possible, it is not the type of conflict which warrants grant of certiorari under this Court's rule. The Eighth Circuit Court of Appeals, moreover, apparently does not agree that there is an inconsistency between *IRTL* and *MCCL*. Following the *IRTL* panel decision, the Petitioner sought and was denied rehearing and en banc rehearing. App. 188a.

Indeed, any claim of a conflict is unsupported by the Eighth Circuit's treatment of both cases. Both cases recognized the contribution-expenditure dichotomy. *MCCL*, 692 F.3d at 878; *IRTL*, 717 F.3d at 601. Both cases recognized that *Citizens United* did not explicitly overturn *Beaumont*. *MCCL*, 692 F.3d at 879; *IRTL*, 717 F.3d at 601. Both cases recognized that *Citizens United* did overturn *Austin*'s anti-distortion analysis. *Austin v. Michigan Chamber of Commerce,* 494 U.S. 652 (1990); *MCCL*, 692 F.3d at 879; *IRTL*, 717 F.3d at 603. And both cases recognized that *Citizens United* did not explicitly overturn *Austin*'s equal protection analysis. *MCCL*, 692 F.3d at 879 n.12; *IRTL*, 717 F.3d at 603. In short, in both cases the Eighth Circuit recognized the Supreme Court's holding in *Citizens United*, but refused to extend that case beyond its explicit limitations given other existing precedent, namely *Beaumont*. No *intra*-circuit conflict exists.

Second, the Petition attempts to create a conflict between the panel's decision and the Colorado

Supreme Court's decision in *Dallman v. Ritter*, 225 P.3d 610 (Colo. 2010) (en banc). The failure in the Petitioner's analysis is simply that the issue in *Dallman* is substantively different than the issue presented here. The issue in *Dallman* was the constitutionality of a 2008 amendment to the Colorado Constitution. *Id*. at 615. The amendment banned contributions to political parties and candidates from government contract holders. *Id*. at 616. The explicit purpose of the amendment was to prevent holders of sole source government contracts from making political contributions. *Id.* The amendment went on to define contract holder to include individuals, corporations, and labor unions amongst others. *Id*. The definition also included union political action committees, but no other political action committees, including those that would have otherwise met the definition of contract holder including corporate political action committees. *Id*. at 634. In this unique circumstance, the Colorado Court determined the government's rationale for the disparate treatment was unjustified as it directly contravened the express purpose of the amendment. *Id*. 635. Nothing in *Dallman* stands for the proposition that corporations and unions are similarly situated in *all* circumstances or that *Citizens United* rejected *quid pro quo* corruption or the appearance thereof as justification for corporate contribution bans.

More important than what types of conflict the Petition does claim, is what it does not. The Petition does not cite to any decision of any other circuit

contrary to *IRTL*. The Petition does not cite to any other state supreme court decisions contrary to *IRTL*. As a result, the Petition does not and cannot claim an entrenched national split exists warranting this Court's intervention.

II. Iowa's Corporate Contribution Statute Is Otherwise Unique.

Petitioner goes to great lengths to demonstrate the unique contours of Iowa's corporate contribution ban. Indeed Iowa's statute is unique. As noted previously, while Iowa Code section 68A.503 applies to corporations, it also equally applies to insurance companies, savings associations, banks, and credit unions. Iowa Code § 68A.503(1). Unlike the statutes at issue in *Citizens United*, *Austin*, and *MCCL*, Iowa's statute is not triggered on the corporate identity alone. The Petition ignores the significance of this uniqueness – both in what harm Iowa is attempting to remedy in section 68A.503 and why Iowa's statute is ill-suited to serve as a test case in the national discussion of campaign finance.

Omitted in the Petition is any discussion of similar state or federal statutes. Would a substantive discussion of Iowa's statute have impact beyond the banks of the Missouri and Mississippi Rivers? It certainly does not appear so on the face of the Petition. Without significant national impact, or even a suggestion thereof, the Petitioner has failed to create a compelling *federal* question.

Iowa further questions the significance of Supreme Court review even to Iowa law. First, the Petitioner explicitly notes that its Equal Protection challenge "does not address whether government may ban *both* corporate and union contributions." Petition at 5 (emphasis in original). If the constitutional infirmity in Iowa law can be ameliorated simply by adding unions to the list of enumerated entities in Iowa Code section 68A.503(1), no important federal question exists. Second, although Iowa Code section 68A.503 does not ban union contributions, other Iowa law does. Iowa Code section 20.26, which governs public unions, bans union contributions. Iowa Code § 20.26 ("An employee organization shall not make any direct or indirect contribution out of the funds of the employee organization to any political party or organization or in support of any candidate for elective public office.").

CONCLUSION

For the above-stated reasons, the Respondents respectfully request that this Court deny the Petition for Writ of Certiorari filed by the Petitioner.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

JULIE F. POTTORFF*
Deputy Attorney General

JEFFREY S. THOMPSON
Deputy Attorney General

MEGHAN GAVIN
Assistant Attorney General
1805 E. Walnut Street
Des Moines, IA 50319
(515) 281-5166
Julie.Pottorff@iowa.gov

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**Counsel of Record*