



Iowa General Assembly

2014 Legal Updates

Legislative Services Agency – Legal Services Division

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Purpose. *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

IOWA INDEPENDENT EXPENDITURE COMMITTEES—CAMPAIGN FINANCE

Filed by the United States Court of Appeals for the Eight Circuit
June 13, 2013

Iowa Right To Life Committee, Inc. v. Megan Tooker

No. 12-1605, 717 F.3d 576 (2013)

<http://media.ca8.uscourts.gov/opndir/13/06/121605P.pdf>

Factual Background. Iowa Right To Life, Inc. (IRTL) is a nonprofit 501(c)(4) corporation, registered in Iowa, whose primary purpose is to provide factual information on a range of right-to-life issues. IRTL is not controlled by a candidate for public office, and less than half of its annual expenditures are dedicated to support the election or defeat of candidates or the passage or defeat of ballot issues. IRTL claims that it wants to make independent expenditures and contributions to support individual candidates for public office. During the 2010 election cycle, IRTL wanted to make an independent expenditure of \$750 to support the election of an Iowa Attorney General candidate. IRTL did not make this expenditure and claims that potential application and enforcement of Iowa law produced a chilling effect that prevented IRTL from making that independent expenditure. IRTL also wanted to make a direct \$100 contribution to that same candidate's campaign, but did not make this contribution as a result of Iowa's ban on direct corporate contributions.

Procedural Background. IRTL filed suit in the federal court for the Southern District of Iowa (District Court) seeking to enjoin the State of Iowa (State) from enforcing certain provisions of state campaign finance law as well as associated administrative rules and forms.

The District Court denied IRTL's motion for a preliminary injunction and both IRTL and the State moved for summary judgment. The District Court ruled against IRTL on all four counts of IRTL's complaint, which served as the basis by which IRTL sought to enjoin the State from enforcing the relevant laws, and IRTL appealed the decision to the United States Court of Appeals for the Eighth Circuit (Court).

Issues. The issues on appeal before the Court were as follows:

1. Whether IRTL had standing to make a First Amendment challenge related to the chilling effect created by the potential application of the terms "political committee" and "permanent organization" to IRTL which would result in imposing on IRTL political committee status and associated burdens.
2. Whether under Iowa law reporting and disclosure requirements related to independent expenditures are overly burdensome against the First Amendment.
3. Whether Iowa's ban on direct corporate contributions to individual candidates and candidate committees violates the First and Fourteenth Amendment.
4. Whether Iowa's requirements that a corporation's board approve an independent expenditure and that a corporate officer certify such approval are constitutional under the First Amendment and the Equal Protection Clause of the Fourteenth Amendment.

Opinion by Circuit Judge Benton. Judge Benton's decision, joined by Circuit Judges Smith and Melloy, affirmed in part, reversed in part, and remanded certain issues to the District Court. Judge Melloy agreed with the Court's opinion in its entirety, but also offered a concurring opinion.

IRTL Status. The Court affirmed the District Court's holding that IRTL lacked standing to challenge the definitions of the terms "political committee" and "permanent organization" contained in Iowa Code §§68A.102(18) and 68A.402(9) respectively. The Court relied upon a decision of the Iowa Supreme Court which held that, under Iowa law, when a corporation whose major purpose is not express political advocacy makes independent expenditures in Iowa it is

considered an independent expenditure committee and not a political committee or permanent organization, both of which are subject to more stringent statutory requirements. The Court held that IRTL lacked standing to challenge the definitions of the terms “political committee” and “permanent organization” because those terms do not apply to IRTL and, therefore, there is no credible threat of IRTL being included, or facing prosecution, under those definitions.

Reporting and Disclosure Requirements. Iowa statutes require independent expenditure committees to file all of the following reports:

1. An independent expenditure statement and initial report within 48 hours of making an initial independent expenditure [Iowa Code §§68A.404(3) and 68A.404(4)(a)].
2. Ongoing reports periodically, regardless of activity [Iowa Code §68A.404(3)(a)].
3. Supplemental reports if certain specified activity occurs [Iowa Code §68A.404(3)(a)(1)].
4. A termination report [Iowa Code §68A.402B(3)].

The Court noted that while laws that burden political speech are generally subject to strict scrutiny, laws that require disclosure alone are, in most instances, subject to a less rigorous standard of exacting scrutiny because such laws do not limit activity or prohibit political speech itself. The Court upheld the Iowa statutory provisions that require filing of an independent expenditure statement and initial report within 48 hours of making an initial independent expenditure because there is a “substantial relation” between the disclosure requirements and the sufficiently important governmental interest in providing the public with timely information on the origins of speech within the “political marketplace”.

The Court stated, however, that ongoing reporting requirements that operate regardless of whether the organization makes additional independent expenditures hinder the free speech rights of IRTL and other groups whose major purpose is not nominating or electing candidates, and that there is not a sufficiently important governmental interest that justifies requiring ongoing reporting for such organizations. The Court then extended this reasoning to find unconstitutional the supplemental reporting requirements imposed upon independent expenditure committees, stating that the State “does not explain how requiring additional, redundant, and more burdensome reports fulfills a sufficiently important informational interest not already advanced by the independent expenditure statement.”

The Court also found that requiring independent expenditure committees to file a termination report, unrelated to disclosure of contributions and expenditures, is “part and parcel with the ongoing reporting requirements” and “fails to advance a sufficiently important government interest substantially related to the termination requirement.” The Court stated, however, that the termination report requirement could conceivably advance a corporate governance interest in protecting shareholders of certain corporations, but that such an interest could not apply to corporations, such as IRTL, that do not have shareholders. The Court therefore held that such provisions in Iowa law are unconstitutional under the First Amendment.

Direct Corporate Contribution Ban. Iowa Code §68A.503 prohibits corporations and certain financial institutions from making contributions directly to candidates or candidate committees (other than ballot issue committees). IRTL challenged the statute as unconstitutional under the First and Fourteenth Amendments. The Court, following First Amendment precedent established in *FEC v. Beaumont*, 539 U.S. 146 (2003), held that the contribution ban is constitutional because it is closely drawn to serve the compelling governmental interest of preventing quid pro quo corruption.

In its equal protection analysis, the Court found that the ban on direct contributions to candidates or candidate committees by corporations serves to prevent quid pro quo corruption and that the restriction is content neutral, meaning that it serves purposes that are unrelated to the content of what is being expressed. Under this analysis, the Court stated that the ban is constitutional under the Fourteenth Amendment. The Court further noted that the ban on direct contributions is not a complete ban because corporations may express support of candidates or candidate committees through formation of or contributions to political action committees (PACs). The Court held that the contribution ban that applied only to corporations and certain types of financial institutions and insurance companies but not to labor unions or other groups did not impermissibly differentiate between similarly situated speakers. The Court also held that the ban is “closely drawn to match a sufficiently important interest” and is, therefore, constitutional under United State Supreme Court precedent established in *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990).

Corporate Requirements. Iowa Code §68A.503 requires the board of directors of a corporation to approve independent expenditures by the corporation and that an officer of the corporation certify the board authorization. The Court overturned the District Court ruling that IRTL did not have standing to raise the claim that the statute violates the First Amendment, finding that simply by “alleging an intention to engage in a course of conduct that is clearly proscribed by statute,” conferred standing on IRTL to make its First Amendment challenge. The Court then remanded the First Amendment claim to the District Court for consideration.

IRTL also raised two separate claims under the Equal Protection Clause of the Fourteenth Amendment: that the approval and certification requirements were content based and that the requirements impermissibly differentiate between similarly situated speakers. The Court remanded the question of whether the statutes entail content-based restrictions to the District Court for consideration along with the First Amendment claim because the District Court had dismissed this Fourteenth Amendment claim as duplicative of IRTL’s First Amendment claim.

The Court further held that the board authorization requirement relating to IRTL's claim that the authorization and certification requirements differentiate between corporations, such as IRTL, and other similarly situated speakers, is constitutional under the Equal Protection Clause because the statute uses the word "entities" rather than "corporations" and, therefore, does not single out corporations for disparate treatment. The Court applied the same analysis to find that the language in Iowa Code §68A.404(5)(g), limiting the officer certification requirement to corporations only, is unconstitutional because it is not narrowly tailored to serve a compelling governmental interest. The Court stated that the State had failed to advance "any interest, compelling or otherwise" to justify applying the certification requirement only to corporations. The Court remanded the issue of severability of the certification requirement from the statute to the District Court for consideration in the first instance.

United States Supreme Court Consideration. On September 27, 2013, IRTL filed a petition for a writ of certiorari with the United States Supreme Court. In its petition for a writ of certiorari, IRTL presented two questions for review by the Supreme Court: 1) "[w]hether Iowa's ban on political contributions by corporations (and enumerated business entities), but not by unions, violates Fourteenth Amendment equal protection"; and 2) "[w]hether this corporate-contribution ban violates the First Amendment."

On April 7, 2014, the United States Supreme Court denied IRTL's motion for certiorari, allowing the Eight Circuit opinion in the case to stand on those questions. *Iowa Right To Life Comm., Inc. v. Tooker*, 134 S.Ct. 1787 (2014).

Pending Actions. The District Court has not considered the First Amendment and Fourteenth Amendment claims or severability issues on remand from the Eight Circuit. Corrective legislation has not been introduced for consideration by the General Assembly.

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