A Penny for Your Votes: Eliminating Corporate Contribution Bans and Promoting Disclosure After *Citizens United*

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ABSTRACT: In 2010, Citizens United v. Federal Election Commission *established that the First Amendment protects corporate political speech.* Citizens United *subjected the federal ban on corporate independent expenditures to strict scrutiny, ultimately holding the ban unconstitutional. This Note argues that courts should also apply strict scrutiny to federal and state bans on corporate contributions because these bans discriminate on the basis of corporate identity, similar to the independent expenditure bans struck down in* Citizens United. *Even if strict scrutiny reveals that some limits on corporate contributions are necessary, a complete ban is not narrowly tailored to governmental interests and is therefore unconstitutional. Further, as Iowa's contribution ban exemplifies, many bans in their current form are susceptible to loopholes. To overcome the unconstitutionality of corporate contribution bans and their potential for loopholes, this Note argues that campaign finance disclosure is an ideal alternative for accomplishing the goals of corporate contribution bans.*

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I. INTRODUCTION

Money has been intertwined with American politics since the birth of our nation, but the injection of capital into our electoral process has now proliferated to an unprecedented degree.[1] In the 2012 presidential election, for example, Barack Obama and Mitt Romney raised a record-breaking sum of $2.06 billion to fund their respective presidential campaigns.[2] The cost of congressional campaigns has skyrocketed as well, with one senator raising over $45 million in the months preceding the 2014 midterm election.[3] The dramatic growth in campaign fundraising has similarly affected state-level politics; Iowa Governor Terry Branstad, for example, raised $1.26 million in a three-month period leading up to the 2014 gubernatorial election.[4] As money plays an increasingly powerful role in American elections, campaign finance law is crucial to maintaining the integrity of our democratic process.

Campaign finance law classifies the use of money in campaigns as political speech:[5]

> A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money.[6]

The landmark campaign finance decision in *Citizens United v. Federal Election Commission* applied strict scrutiny to the federal ban on corporate independent expenditures, holding that a blanket ban was an unconstitutional restriction on corporate political speech.[7] *Citizens United* thus

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1. *See* Emily Cahn, *House Democrats Break Fundraising Record in September*, ROLL CALL (Oct. 18, 2013, 8:40 AM), http://atr.rollcall.com/house-democrats-break-fundraising-record-in-september; Michael Luo, *Obama Hauls in Record $750 Million for Campaign*, N.Y. TIMES (Dec. 4, 2008), http://www.nytimes.com/2008/12/05/us/politics/05donate.html.

2. Jeremy Ashkenas et al., *The 2012 Money Race: Compare the Candidates*, N.Y. TIMES, http://elections.nytimes.com/2012/campaign-finance (last visited Dec. 31, 2014).

3. *Who's Raised the Most*, CTR. FOR RESPONSIVE POLITICS, http://www.opensecrets.org/overview/topraise.php?cycle=2014&Display=S&Type=M6 (last visited Dec. 31, 2014).

4. Jason Noble, *Branstad King in 2014 Fundraising*, DES MOINES REGISTER (Oct. 20, 2014, 11:34 PM), *available at* http://www.desmoinesregister.com/story/news/elections/2014/10/21/terry-branstad-king-fundraising-iowa-elections-jack-hatch/17647773/.

5. *See generally* Buckley v. Valeo, 424 U.S. 1 (1976) (per curiam), *superseded by statute*, Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (codified as amended in scattered sections of the U.S.C.), *invalidated by* Citizens United v. FEC, 558 U.S. 310 (2010); *see also* First Nat'l Bank of Bos. v. Bellotti, 435 U.S. 765, 772 (1978).

6. *Buckley*, 424 U.S. at 19.

7. *See Citizens United*, 558 U.S. at 340. For a discussion on the distinction between independent expenditures and contributions, see *infra* Part II.A.1.

established that the First Amendment protects all political speech, regardless of whether the speaker is a corporation or an individual.[8]

The facts of *Citizens United* only gave the Court an occasion to address the constitutionality of corporate independent expenditure bans. However, because the same identity discrimination concerns also apply to corporate contribution bans, the Court should also subject these bans to strict scrutiny under *Citizen United*'s rationale.[9] Even if the Court upholds some limitations on corporate contributions, a blanket contribution ban would fail strict scrutiny because it is not narrowly tailored to governmental interests underlying the ban.[10]

Corporate contribution bans seek to avoid corruption and the "appearance of corruption."[11] This corruption is often described as quid pro quo corruption, or corruption that involves "[a]n action or thing that is exchanged for another action or thing of more or less equal value."[12] For instance, corruption would occur if a corporation exchanged independent expenditures or contributions for influence over an elected official's actions. By banning corporate contributions, the government seeks to eliminate opportunities for such quid pro quo corruption.

As Iowa exemplifies, however, loopholes in many corporate contribution bans—including the federal bans—render the bans ineffective in preventing corruption or the appearance of corruption.[13] In light of these loopholes, implementing intermediate campaign finance disclosure will more effectively achieve the anti-corruption goals of a corporate contribution ban without restricting corporations' political speech.[14]

This Note argues that the constitutionality of corporate contribution bans should be assessed using a strict scrutiny standard to maintain consistency with *Citizens United*. Part II provides an introduction to federal campaign finance law regarding corporate contributions. It also describes Iowa's current corporate contribution law, which presents a case study of state law influenced by the federal contribution ban. Part III explains how the holding of *Citizens United* supports the application of strict scrutiny to corporate contribution bans. It argues that even if the bans further compelling governmental interests, they are not narrowly tailored to serve those interests, and are therefore unconstitutional. Finally, Part IV advocates

8. *Citizens United*, 558 U.S. at 353–56.

9. *See infra* Part III.A.

10. *See infra* Part III.B.

11. *Citizens United*, 558 U.S. at 359.

12. BLACK'S LAW DICTIONARY 1443 (10th ed. 2014). The Court similarly defines "quid pro quo." *See, e.g.*, Buckley v. Valeo, 424 U.S. 1 (1976) (per curiam), *superseded by statute*, Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (codified as amended in scattered sections of the U.S.C.), *invalidated by Citizens United*, 558 U.S. 310 (2010).

13. *See infra* Part II.B.2.

14. *See infra* Part IV.

for intermediate campaign finance disclosure as an alternative to corporate contribution bans.

II. CAMPAIGN FINANCE LAW

To understand the context in which this Note evaluates the constitutionality of corporate contribution bans, this Part provides a brief introduction to federal campaign finance law. Part II.A addresses the key distinction between contributions and independent expenditures and evaluates the status of corporate contribution bans in light of *Citizens United*. Part II.B discusses Iowa's corporate contribution ban as a case study, analyzing the law and its limited liability company ("LLC") loophole in the context of federal law and *Citizens United*.

A. *FEDERAL CAMPAIGN FINANCE LAW*

Since the beginning of the 20th century, when President Theodore Roosevelt recommended a ban on corporate contributions to politicians, campaign finance laws have attempted to prevent the trading of money for political favors.[15] Decades later, President Richard Nixon's reelection committee demonstrated the potential for campaign finance abuse when it accepted illegal corporate contributions in exchange for political favors and used those contributions to fund the Watergate break-in.[16]

Ironically, in 1972, the same year as the Watergate scandal, President Nixon signed the Federal Election Campaign Act ("FECA"), a comprehensive overhaul and consolidation of campaign finance laws.[17] FECA sought to limit the disproportionately large influence of wealthy individuals and organizations on federal elections.[18] Congress also attempted to regulate how federal campaigns could spend funds and promote transparency through public campaign finance disclosures.[19] In light of President Nixon's indiscretions, Congress amended FECA in 1974 to limit individual contributions and create the Federal Election Commission ("FEC") to enforce the law.[20]

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15. *The FEC and the Federal Campaign Finance Law: Historical Background*, FED. ELECTION COMM'N, http://www.fec.gov/pages/brochures/fecfeca.shtml#Historical_Background (last updated Jan. 2013) [hereinafter *Historical Background*].

16. *Campaign Finance Special Report: The Past Reforms—A Look at the Laws*, WASH. POST (1998), http://www.washingtonpost.com/wp-srv/politics/special/campfin/intro3.htm. The Watergate scandal mired President Nixon in a plot to burgle the Democratic National Party headquarters. Carl Bernstein & Bob Woodward, *FBI Finds Nixon Aides Sabotaged Democrats*, WASH. POST, Oct. 10, 1972, at A01, *available at* http://www.washingtonpost.com/wp-srv/national/longterm/watergate/articles/101072-1.
htm. Hundreds of thousands of dollars in Nixon campaign contributions funded the sabotage. *Id.*

17. *See Historical Background*, *supra* note 15.

18. *Id.*

19. *Id.*

20. *Id.*

Congress amended FECA again in 1976 in response to *Buckley v. Valeo*.[21] The *Buckley* plaintiffs challenged the constitutionality of FECA's contribution, expenditure, and disclosure provisions, claiming they violated the First Amendment's guarantee of the right to free speech.[22] The *Buckley* Court, finding individual expenditure limits unconstitutional, noted that the First Amendment broadly protects political speech "to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people."[23] In addition to political expression, the Court acknowledged that the First Amendment also protects political association, and that laws restricting either right are subject to the "closest scrutiny" because "[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association."[24]

1. Independent Expenditures v. Contributions

In *Buckley* and subsequent decisions, the Court has made a key distinction between contributions and independent expenditures. The FEC defines a contribution as "anything of value given to influence a Federal election."[25] In contrast, "an independent expenditure is political speech presented to the electorate that is not coordinated with a candidate."[26] In other words, the Court classifies a contribution as a direct financial association with a candidate, while independent expenditures are not associated with a specific candidate but merely advocate for a candidate or issue independent of the campaign's oversight.

Buckley concluded that the governmental interest served by individual contribution limits outweighed the restrictions on speech and association that such limits imposed, but that the interest served by limits on individual independent expenditures did not.[27] Candidates for federal office favored both types of limits and argued that the government's compelling interest in limiting contributions lay in preventing corruption and the appearance of corruption, due to the "real or imagined coercive influence" of contributions on candidates' decisions and actions when elected.[28] The Court agreed that

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21. *Id.*

22. *See* Buckley v. Valeo, 424 U.S. 1 (1976) (per curiam), *superseded by statute*, Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (codified as amended in scattered sections of the U.S.C.), *invalidated by* Citizens United v. FEC, 558 U.S. 310 (2010)

23. *Id.* at 14 (quoting Roth v. United States, 354 U.S. 476, 484 (1957)) (internal quotation marks omitted).

24. *Id.* at 15 (quoting NAACP v. Alabama, 357 U.S. 449, 460 (1958)) (internal quotation marks omitted).

25. *Citizens' Guide: What Counts as a Contribution*, FED. ELECTION COMM'N, http://www.fec.gov/pages/brochures/citizens.shtml#contribution (last updated Apr. 2014).

26. *Citizens United*, 558 U.S. at 360.

27. *See generally Buckley*, 424 U.S. 1.

28. *Id.* at 25.

unchecked contributions could lead to such unscrupulous behavior, but it declined to extend the reasoning to independent expenditures.[29] It held that independent expenditures do not pose the same risk of corruption because they are not controlled by or coordinated with a specific campaign.[30] If they are related to one or more candidates, they cease to be independent expenditures and instead become contributions subject to limits.[31]

The Court's treatment of the distinction between contributions and independent expenditures has consistently evolved. A mere two years after stating otherwise in *Buckley*, the Court suggested in dicta that independent expenditures may in fact pose a risk of corruption or its appearance.[32] Yet, in *Austin v. Michigan State Chamber of Commerce*, the Court reaffirmed the distinction between contributions and expenditures, reasoning that corporate expenditure limits in elections aim to prevent "a different type of corruption [than contributions] in the political arena: the corrosive and distorting effects of immense aggregations of wealth that [have] accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas."[33] In *FEC v. Beaumont*, the Court continued to differentiate contributions from expenditures, asserting that "contributions lie closer to the edges than to the core of political expression [like expenditures]" because corporations derive much of their First Amendment speech and association interests from the interests of their members.[34] Despite this language, this Note argues that *Citizens United* set the stage for contributions to receive the same First Amendment protections afforded to expenditures.[35]

2. The Origins of the Federal Corporate Contribution Ban

Federal law has prohibited corporate campaign contributions since the Tillman Act of 1907,[36] which commenced campaign finance regulation.[37] The

29. *See id.* at 45.

30. *See id.* at 46.

31. *See id.*

32. First Nat'l Bank of Bos. v. Bellotti, 435 U.S. 765, 788 n.26 (1978) ("[O]ur consideration of a corporation's right to speak on issues of general public interest implies no comparable right in the quite different context of participation in a political campaign for election to public office."); *see* Richard L. Hasen, Citizens United *and the Illusion of Coherence*, 109 MICH. L. REV. 581, 587 (2011).

33. Austin v. Mich. State Chamber of Commerce, 494 U.S. 652, 660 (1990).

34. FEC v. Beaumont, 539 U.S. 146, 161 (2003).

35. *See infra* Part III.A.

36. Tillman Act of 1907, ch. 420, 34 Stat. 864 (codified as amended at 2 U.S.C. § 441b(2) (2012)).

37. *See* Anthony Corrado, *Money and Politics: A History of Federal Campaign Finance Law*, *in* CAMPAIGN FINANCE REFORM: A SOURCEBOOK 27, 27 (Anthony Corrado et al. eds., 1997) (characterizing the corporate contribution as the "first major thrust for campaign finance legislation at the national level"). Public opinion has censured corporate contributions dating back to the New York life insurance scandal of 1905, in which the public condemned executives

federal corporate contribution ban emerged from "a popular feeling in the late 19th century that aggregated capital unduly influenced politics . . . . [T]he momentum was for elections free from the power of money."[38] From the outset, proponents have justified the corporate contribution ban by asserting it prevents corruption in the form of disproportionate corporate influence in elections and legislation.[39]

Despite the corporate contribution ban's noble goal of preventing corruption, corporations may bypass the ban through loopholes. For example, a corporation may form an LLC to avoid the federal corporate contribution ban, as LLCs are treated as partnerships for federal contribution ban purposes.[40] Unlike a corporation, a partnership may contribute to federal elections if its contributions are under a certain threshold.[41] A similar loophole often exists at the state level.[42] This loophole prevents contribution bans from fully realizing their anti-corruption goals.

The corporate contribution ban currently limits corporations' ability to speak. Like individuals, corporations have a right to engage in free speech, but political action committees ("PACs") are the only vehicles through which corporations can currently make contributions, and they do not enable corporations to speak.[43] "Even if a PAC could somehow allow a corporation to speak[,] and it does not[,] . . . PACs are burdensome alternatives; they are expensive to administer and subject to extensive regulations."[44] For instance, PACs "must appoint a treasurer" to whom donations are forwarded, maintain records on the identities of their contributors, file organization statements with the FEC and notify it within ten days of any changes to the statement, and file extensive monthly reports to the FEC.[45] The complicated and expensive process of PACs render them especially impractical for smaller corporations, which comprise the majority of U.S. corporations and pose a lower risk of political corruption.[46]

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who made corporate contributions as embezzling thieves. Adam Winkler, *"Other People's Money": Corporations, Agency Costs, and Campaign Finance Law*, 92 GEO. L.J. 871, 887 (2004). In the early 20th century, the media portrayed life insurers' contributions to candidates as especially contemptible because company funds were directly connected to policyholders' pocketbooks, or "other people's money." *Id.* at 893.

38. Winkler, *supra* note 37, at 871 (quoting *Beaumont*, 539 U.S. at 152).

39. *Id.* at 927.

40. *Partnerships: Introduction*, FED. ELECTION COMM'N, http://www.fec.gov/pages/brochures/partner.shtml (last updated Apr. 2014).

41. *Partnerships: Partnership Contributions: The Basics*, FED. ELECTION COMM'N, http://www.fec.gov/pages/brochures/partner.shtml#basics (last updated Apr. 2014) [hereinafter *Partnership Contributions: The Basics*].

42. *See infra* Part II.B.2.

43. Citizens United v. FEC, 558 U.S. 310, 337 (2010).

44. *Id.*

45. *Id.* at 337–38.

46. *See id.* at 354.

3. *Citizens United v. FEC*

Although early discussions surrounding the corporate contribution ban focused on corruption and inequity, the Supreme Court's pivotal decision in *Citizens United v. FEC* emphasized corporations' right to engage in political speech.[47] Prior to *Citizens United*, federal law prohibited corporations from making contributions or independent expenditures to candidates and restricted corporations to donating only to social-welfare groups classified under section 501(c)(4) of the Internal Revenue Code.[48] Section 501(c)(4) social-welfare groups were to advocate for issues, rather than engage in political activity.[49] Because these groups could not engage in "express advocacy" or "electioneering communications,"[50] they avoided the corruption concerns generally associated with corporate political donations.[51] *McConnell v. FEC* upheld these contribution restrictions, relying on precedent[52] to support the conclusion that a speaker's corporate status may warrant a ban on political speech.[53]

Citizens United transformed the independent expenditure landscape for corporations.[54] Citizens United was a nonprofit corporation that released *Hillary: The Movie*, a documentary critical of Hillary Clinton, who was at the time a candidate for the Democratic presidential nomination.[55] Citizens United produced advertisements for the documentary, which it planned to release through cable video-on-demand services within 30 days prior to the primary elections, qualifying the video as "electioneering communication."[56] To avoid penalties for violating the independent expenditure ban, Citizens United sought declaratory and injunctive relief, arguing that the law was unconstitutional as applied to *Hillary* because it denied the corporation its right to free speech.[57] The U.S. District Court for the District of Columbia

47. *Id.* at 366.

48. *See* 2 U.S.C. § 441b(b)(2) (Supp. IV 2010), *invalidated by Citizens United*, 558 U.S. 310; Matt Bai, *How Much Has* Citizens United *Changed the Political Game?*, N.Y. TIMES (July 17, 2002), http://www.nytimes.com/2012/07/22/magazine/how-much-has-citizens-united-changed-the-political-game.html.

49. Bai, *supra* note 48.

50. An electioneering communication is a "broadcast, cable or satellite communication" that meets each of the following requirements: "1. The communication refers to a clearly identified candidate for federal office; 2. The communication is publicly distributed shortly before an election for the office that the candidate is seeking; and 3. The communication is targeted to the relevant electorate (U.S. House and Senate candidates only)." *Electioneering Communications*, FED. ELECTION COMM'N, http://www.fec.gov/pages/brochures/electioneering.shtml (last updated Jan. 2010).

51. *Id.*

52. *See, e.g.*, Austin v. Mich. State Chamber of Commerce, 494 U.S. 652 (1990).

53. McConnell v. FEC, 540 U.S. 93, 203–09 (2003).

54. Citizens United v. FEC, 558 U.S. 310, 336–37 (2010).

55. *Id.* at 319.

56. *Id.* (internal quotation marks omitted).

57. *Id.* at 322.

denied Citizens United's request for a preliminary injunction, granting summary judgment to the FEC.[58]

On appeal, the Supreme Court addressed the constitutionality of the ban on corporate independent expenditures used for "electioneering communications."[59] The Court reaffirmed that the First Amendment right to free speech—including political speech—applied to corporations,[60] and it ultimately held that an entity's classification as a corporation, rather than a "natural person," did not warrant different treatment under the First Amendment.[61]

The FEC relied primarily on the governmental interest in fighting corruption to argue in favor of the independent expenditure ban's constitutionality.[62] It claimed that a ban on corporate political speech was constitutional because it prevented corruption and the appearance of corruption, as the Court itself had noted in *Buckley*.[63] However, although the *Buckley* Court concluded that this anti-corruption interest warranted contribution limits, the *Citizens United* Court held that this interest did not justify expenditure limits.[64]

The *Citizens United* Court also relied on the circumstances of independent expenditures to make its decision. Because independent expenditures lack prior arrangement and coordination with a candidate, the Court believed they pose a lesser risk of corruption.[65] The anti-corruption justification was therefore insufficient to support an expenditure ban.[66] The Court reasoned that even if corporate independent expenditures result in the appearance of influence or access to legislators, this appearance would not reach such a degree that voters would "lose faith in our democracy."[67] Thus, the governmental interest in avoiding the appearance of corruption did not rise to a level sufficient to limit corporate speech through independent expenditures.[68]

The Court also rejected the FEC's argument that independent expenditure bans are necessary because of the governmental interest in protecting shareholders from being forced to fund a corporation's political speech.[69] The Court noted that corporate governance should resolve conflicts

58. *Id.*
59. *Id.* at 318–19.
60. *Id.* at 342–43.
61. *Id.* at 343.
62. *Id.* at 348, 356.
63. *Id.* at 356.
64. *Id.*
65. *Id.* at 357.
66. *Id.* at 361.
67. *Id.* at 360.
68. *Id.* at 360–61.
69. *Id.* at 361–62.

between shareholders and corporations,[70] and that the statute did not appear concerned with the shareholder-protection interest because it banned corporate political speech only within 30 or 60 days of an election.[71] Because the statute did not account for shareholders that might face pressure to support political speech outside of the 30- or 60-day window, it did not reflect the governmental interest in shareholder protection.[72] The statute also applied to all corporations, including those with only a single shareholder, for which shareholder pressure would not exist.[73] Ultimately, the Court concluded that while the government may regulate corporations engaged in "political speech through disclaimer[s] and disclosure[s]," it may not suppress corporate political speech entirely.[74] As a result, *Citizens United* struck down the corporate independent expenditure ban as unconstitutional.[75]

B. IOWA CAMPAIGN FINANCE LAW

Although *Citizens United* pertained only to federal campaign finance law, the Court applied its holding to the states in 2012.[76] Because state campaign finance laws draw heavily from *Citizens United* and federal laws, examination of state contribution bans can prove useful for identifying weaknesses in their federal counterparts. Accordingly, this Subpart examines Iowa's campaign finance laws and assesses the merits of its corporate contribution ban, under the premise that similar issues also exist in the federal corporate contribution ban. Iowa is a particularly useful case study because while its contribution ban is rooted in Iowa statute,[77] it shares key similarities with its federal counterpart[78]—most notably, the LLC loophole examined in Part II.B.2.

1. Iowa's Corporate Contribution Ban

Like the federal distinction between contributions and independent expenditures, Iowa law provides specific definitions of these key terms. Iowa defines a contribution as "[a] gift, loan, advance, deposit, rebate, refund, or transfer of money" given to a candidate, including payment for personal services.[79] In contrast, an independent expenditure is:

> [O]ne or more expenditures in excess of seven hundred fifty dollars in the aggregate for a communication that expressly

70. *Id.* (quoting First Nat'l Bank of Bos. v. Bellotti, 435 U.S. 765, 794 (1978)).

71. *Id.* at 362.

72. *Id.*

73. *Id.*

74. *Id.* at 319.

75. *Id.* at 372.

76. *See* Am. Tradition P'ship, Inc. v. Bullock, 132 S. Ct. 2490, 2491 (2012) (per curiam) (ruling that state law must follow the holding of *Citizens United*).

77. *See* IOWA CODE § 68A.503 (2014).

78. *See supra* Part II.A.2.

79. IOWA CODE § 68A.102(10)(a).

> advocates the nomination, election, or defeat of a . . . candidate or the passage or defeat of a ballot issue . . . without the prior approval or coordination with a candidate, candidate's committee, or a ballot issue committee.[80]

After *Citizens United*, the Iowa Legislature amended § 68A.503 of the Iowa Code, eliminating Iowa's ban on corporate independent expenditures and reducing the scope of prohibited contributions.[81] Although this amendment eliminated the blanket ban on independent expenditures, it still required non-individual entities, such as corporations, to obtain authorization for independent expenditures from their board of directors or other governing body.[82] The Eighth Circuit held that this provision did not "treat[] corporations differently from other entities" and was therefore constitutional.[83]

Even after *Citizens United* and corresponding changes to its independent expenditure laws, Iowa continues to prohibit corporate contributions to candidates and committees,[84] except for contributions to ballot issue committees. Iowa goes beyond merely banning "corporations" from making these contributions; it also explicitly prohibits unincorporated insurance companies, savings associations, banks, and credit unions from making contributions.[85] Unlike the federal aggregate limits on individual contributions, Iowa imposes no contribution caps on the amount of money an individual donor may contribute to a campaign.[86]

Iowa's corporate campaign finance laws tend to be stricter than other states' laws. Nationally, Iowa is one of only seven states to ban corporate contributions to candidates while placing no contribution limits on other

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80. *Id.* § 68A.404(1).

81. *See* Iowa Right to Life Comm., Inc. v. Smithson, 750 F. Supp. 2d 1020, 1026 (S.D. Iowa 2010).

82. IOWA CODE § 68A.404(5)(g).

83. Iowa Right to Life Comm., Inc. v. Tooker, 717 F.3d 576, 605 (8th Cir. 2013).

84. IOWA CODE § 68A.503(1). The statute defines a "corporation" as a for-profit or non-profit corporation. *Id.* § 68A.503(7).

85. *Id.* § 68A.503(1). The most recent proposed reform to Iowa's campaign finance laws occurred during the 2013 Iowa General Assembly, in which Senate File 329 was proposed as a revision to Iowa's independent expenditure laws. S. File 329, 85th Gen. Assemb., 1st Sess. (Iowa 2013). Among its reforms were: (1) an individual who made at least one independent expenditure, and filed the statements currently required by § 68A.404, would not be required to organize a committee; (2) the definition of "independent expenditure" was expanded to include expenditures over $750 for communication expressly advocating for or against a "candidate that is made without the prior approval or coordination with a candidate, candidate's committee, state statutory political committee, county statutory political committee, or a political committee." *Id.* The bill's last action during the 2013 General Assembly was its assignment to the State Government Subcommittee on April 2, 2013. *Bill History for SF 329*, IOWA LEGISLATURE, http://coolice.legis.iowa.gov/Cool-ICE/default.asp?Category=BillInfo&Service=DspHistory&var=SF&key=0353B&GA=85 (last visited Jan. 1, 2015).

86. *See supra* notes 81–83 and accompanying text.

sources.[87] Some states, however, such as Indiana, allow corporate contributions but impose aggregate limits.[88] These limits vary depending on factors such as the chamber of the legislature for which a candidate is running or whether a candidate is running for statewide office.[89] Other states, such as Missouri, Oregon, Utah, and Virginia, place no limits or prohibitions on individual, state party, PAC, or corporate contributions.[90]

2. The LLC Loophole

Although Iowa abandoned its corporate independent expenditure ban after *Citizens United*, it has retained its corporate contribution ban.[91] In response to the continued restriction on corporate contributions, corporations have devised ways to bypass the ban and make unimpeded campaign contributions, thereby reducing the effectiveness of the ban. A key method that corporations use to bypass the corporate contribution ban is what this Note refers to as the LLC loophole.

In its current form, the Iowa corporate contribution ban allows corporations to sidestep the ban by forming an LLC. The ban allows non-corporate entities to make contributions if they are "established for one or more legitimate business purposes."[92] Thus, "[a]n LLC, LLP, or any other organization that does not file articles of incorporation" may make contributions unencumbered by the corporate ban.[93] The Iowa Ethics and Campaign Disclosure Board ("Iowa Ethics Board")[94] issued an advisory

87. *Contribution Limits: An Overview*, NAT'L CONFERENCE OF STATE LEGISLATURES, http://www.ncsl.org/legislatures-elections/elections/campaign-contribution-limits-overview.aspx (last updated Oct. 3, 2011).

88. NAT'L CONFERENCE OF STATE LEGISLATURES, STATE LIMITS ON CONTRIBUTIONS TO CANDIDATES: 2011–2012 ELECTION CYCLE 4 (2012), *available at* http://www.ncsl.org/Portals/1/documents/legismgt/Limits_to_Candidates_2011-2012v2.pdf.

89. *Id.*

90. *Id.* at 7, 10–11.

91. IOWA CODE § 68A.404, .503 (2014).

92. IOWA ETHICS & CAMPAIGN DISCLOSURE BD., ADVISORY OPINION AO-IECDB 2011-07 (2011), *available at* http://www.iowa.gov/ethics/legal/adv_opn/2011/11fa007.htm [hereinafter IOWA ETHICS ADVISORY OPINION]. The Board went on to elaborate that a non-corporate entity that is funded by at least one corporation may legally contribute to a candidate committee or political committee from its general operating funds. The Board stated that an unincorporated entity may receive income from a corporation in its general operating account and contribute that income to a candidate or political committee legally if the income is derived from "legitimate business purposes and not as a means to illegally funnel corporate money through the [non-corporate entity] to a candidate committee or political committee." *Id.* For instance, illegal funneling would occur if a corporation derived income from selling goods at higher prices to contribute revenue exceeding fair market value to a candidate committee or political committee.

93. IOWA ADMIN. CODE r. 351-4.44 (2014).

94. The Iowa Ethics Board is an independent executive agency whose duties include overseeing the administration of campaign ethics laws, receiving and publicizing federal and state campaign finance disclosure reports, and investigating state election complaints. *What the Board*

opinion confirming that non-corporate business entities, such as LLCs, are not subject to the ban even if a corporation owns part or all of the entity.[95] The Iowa Ethics Board cautioned that even non-corporate entities exempted from the contribution ban could still violate the law if they made contributions in the name of another—for example, by making a contribution in the name of their corporate parent company.[96] The Iowa Ethics Board indicated it was considering amending Iowa Administrative rule 351-4.44, which regulates contributions, to prohibit contributions by non-corporate entities owned partly or wholly by corporations. As of this Note's writing, however, the non-corporate business entity exception to the corporate contribution ban remains unchanged.[97]

Because forming an LLC "established for one or more legitimate business purposes" is a relatively straightforward process, a corporation can easily avoid the corporate contribution ban.[98] Although no existing federal or state records have documented the frequency with which corporations use the LLC loophole, its existence is a key flaw in the current contribution ban.[99] A corporation may form a subsidiary LLC and hold a revenue-generating event such as a fundraiser. The corporation-as-LLC may donate a portion of the money raised from the event to charity, but may contribute the majority of the funds to campaign committees. The LLC is required to report the amount of money it contributes, but is not required to publicly disclose the origin of its funds, such as whether a corporation funds the LLC.[100] In addition, the

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Does, IOWA ETHICS & CAMPAIGN DISCLOSURE BD., http://www.iowa.gov/ethics/board/what_board_does.htm (last updated Jan. 27, 2014).

95. IOWA ETHICS ADVISORY OPINION, *supra* note 92. The Iowa Ethics Board responded to a request for an opinion related to an LLC not subject to the corporate contribution ban from Iowa Code § 68A.503, which a corporation partly or completely owned, and which received income from individuals, corporations, or other entities. *Id.* The request presented two inquiries:

> (1) An LLC or LLP, through its business operations, receives income from individuals, corporations, and other business entities, which is commingled and becomes part of the LLC's or LLP's general operating budget. May the LLC or LLP (or another unincorporated business entity) make a contribution to a PAC or other committee with these general operating funds? (2) Is it permissible for an LLC or LLP (or another unincorporated business entity) to make a contribution to a PAC or a candidate committee if it is owned in whole or in part by a corporation?

Id. In its response, the Board identified Iowa Code § 68A.503—prohibiting "an insurance company, savings association, bank, credit union, or corporation [from making] a monetary or in-kind contribution to a candidate or committee except for a ballot issue committee"—and Iowa Administrative Code rule 351-4.44—exempting from the corporate contribution ban "[a]n LLC, LLP, or any other organization that does not file articles of incorporation"—as the relevant rules that resulted in affirmative answers to both inquiries, barring amendments to Iowa Administrative Code rule 351-4.44. *Id.*; *see also* IOWA ADMIN. CODE r. 351-4.44.

96. IOWA ETHICS ADVISORY OPINION, *supra* note 92; *see also* IOWA CODE § 68A.502.

97. *See* IOWA ADMIN. CODE r. 351 4.44(1); *see also* Iowa Code § 68A.502.

98. *See* IOWA ETHICS ADVISORY OPINION, *supra* note 92.

99. *See generally* Ognibene v. Parkes, 671 F.3d 174 (2d Cir. 2011).

100. IOWA ETHICS ADVISORY OPINION, *supra* note 92.

LLC is generally not required to report its relationship with its parent corporation.[101] In this way, a corporation may legally circumvent the corporate contribution ban.

Iowa is not the only state with a LLC loophole. For instance, New York treats LLCs as individuals, subjecting them to the more lenient individual contribution restrictions, such as high contribution limits.[102] The loophole allows New York corporations to establish multiple LLCs through which they are free to contribute the maximum amount to circumvent more stringent corporate limits.[103] On the federal level, partnerships and certain LLCs may similarly make contributions to influence elections, although they are subject to limits.[104] As the LLC loophole reveals, corporate contribution bans, both on the state and federal level, are relatively easy to circumvent in their current forms.

III. STRICT SCRUTINY RENDERS CORPORATE CONTRIBUTION BANS UNCONSTITUTIONAL

Corporate contribution bans distinguish corporations from individuals and therefore seem inconsistent with *Citizens United*'s holding that corporations' First Amendment rights may not be abridged simply because of their corporate identity.[105] The *Citizens United* Court concluded that "[n]o sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations."[106] Because political speech is crucial to our democracy, the Court stated that such speech should not be restricted simply because its speaker is a corporation.[107] The Court also observed that suppressing corporate political speech restricts "millions of associations of citizens,"[108] and that the independent expenditure bans at issue therefore interfered with the "open marketplace" of ideas that the First Amendment seeks to promote.[109]

Corporate contribution bans trigger the same constitutional concerns as the independent expenditure bans struck down in *Citizens United*. Therefore, contribution bans should be subject to the same strict scrutiny standard that the *Citizens United* Court applied to independent expenditures.[110] Using strict

101. *Id.*

102. Ciara Torres-Spelliscy & Ari Weisbard, *What Albany Could Learn from New York City: A Model of Meaningful Campaign Finance Reform in Action*, 1 ALBANY GOV'T L. REV. 194, 210 (2008).

103. *Id.*

104. *See Partnership Contributions: The Basics*, *supra* note 41.

105. Citizens United v. FEC, 558 U.S. 310, 365 (2010).

106. *Id.* (noting that *First National Bank of Boston v. Bellotti* and *Buckley v. Valeo* established the principle of avoiding suppression of "speech on the basis of the speaker's corporate identity").

107. *Id.* at 349 (citing First Nat'l Bank of Bos. v. Bellotti, 435 U.S. 765, 777 (1978)); *see also id.* at 347 (citing the principle upon which the reasoning in *Bellotti* relied).

108. *Id.* at 354.

109. *See id.* (internal quotation marks omitted).

110. *See id.* at 339–40.

scrutiny to assess contribution bans would result in the bans being held unconstitutional. Under strict scrutiny analysis, blanket corporate contribution bans are not narrowly tailored to the governmental interests that the bans ostensibly serve, rendering the bans unconstitutional.

A. CITIZENS UNITED *ESTABLISHED STRICT SCRUTINY AS THE STANDARD FOR IDENTITY DISCRIMINATION*

Campaign finance law, culminating in *Citizens United*, dictates that "[l]aws that burden political speech are 'subject to strict scrutiny.'"[111] Strict scrutiny is the Supreme Court's highest level of review.[112] *Buckley* applied strict scrutiny to independent expenditures,[113] as did *Citizens United*, which noted that "the Government cannot restrict political speech based on the speaker's corporate identity."[114] Because the same identity discrimination concerns apply to corporate contribution bans, the Court should apply strict scrutiny to such bans as well. To withstand strict scrutiny, the government must prove that "[l]aws that burden political speech . . . further[] a compelling interest and [are] narrowly tailored to achieve that interest."[115] The burden is on the government[116] to show that the law in question is the least restrictive means to accomplish its end.[117]

Campaign contributions are a form of political speech.[118] Because *Citizens United* recognized that corporations and individuals have equal rights to engage in political speech, it follows that corporations and individuals should

111. *Id.* at 340 (quoting FEC v. Wis. Right to Life, Inc., 551 U.S. 449, 464 (2007)).

112. The Supreme Court has established three levels of scrutiny to determine the constitutionality of laws and chooses which level to apply based on the nature of the law in question. *See generally* Gayle Lynn Pettinga, Note, *Rational Basis with Bite: Intermediate Scrutiny by Any Other Name*, 62 IND. L.J. 779, 786–87 (1987) (analyzing the Court's application of differing levels of scrutiny). The lowest level of scrutiny is the rational basis test, under which a law is upheld if it is rationally related to a legitimate government purpose. *See, e.g.*, Pennell v. City of San Jose, 485 U.S. 1, 14 (1988) (demonstrating application of a deferential standard in an equal protection case). The next highest level is intermediate scrutiny, which requires that a law be substantially related to an important government purpose to be upheld. *See, e.g.*, Lehr v. Robertson, 463 U.S. 248, 265–66 (1983) (allowing disparate treatment of men and women as long as the law relates to a "legitimate governmental objective"); Craig v. Boren, 429 U.S. 190, 197 (1976) (requiring classifications based on gender to serve an important government purpose).

113. *See* Buckley v. Valeo, 424 U.S. 1 (1976) (per curiam), *superseded by statute*, Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (codified as amended in scattered sections of the U.S.C.), *invalidated by Citizens United*, 558 U.S. 310.

114. *Citizens United*, 558 U.S. at 346 (citing *First Nat'l Bank of Bos. v. Bellotti*, 435 U.S. 765, 784–85 (1978)).

115. *Id.* at 340 (quoting FEC v. Wis. Right to Life, Inc., 551 U.S. 449, 464 (2007)) (internal quotation marks omitted).

116. *See, e.g.*, Miller v. Johnson, 515 U.S. 900, 920 (1995); Burson v. Freeman, 504 U.S. 191, 198 (1992); City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989).

117. *See* Simon & Schuster, Inc. v. N.Y. State Crime Victims Bd., 502 U.S. 105, 120 (1991).

118. *See Citizens United*, 558 U.S. at 319.

have equal rights to contribute to political campaigns.[119] In *United States v. Danielczyk*, the U.S. District Court for the Eastern District of Virginia considered whether the federal corporate contribution ban violated the First Amendment.[120] Relying on *Citizens United*'s identity discrimination discussion, the district court found the federal ban unconstitutional because it fails to afford corporations the same right as individuals within FECA's limits.[121]

The Fourth Circuit reversed but failed to explicitly state the level of scrutiny applicable to the contribution ban.[122] Instead, the circuit relied on the constitutionality of the nonprofit contribution ban[123] to hold the corporate contribution ban similarly constitutional.[124] The Fourth Circuit did not address the appropriate level of scrutiny for contributions because it claimed that corporate identity discrimination does not "necessarily appl[y] in the context of direct contributions,"[125] although *Citizens United* indicated otherwise.[126]

Citizens United associated identity discrimination—discrimination based on who the speaker is—with content-based discrimination—discrimination based on what the speaker says.[127] Content-based discrimination is subject to strict scrutiny.[128] Likewise, the Court held that identity discrimination must also be subject to strict scrutiny[129] because "[s]peech restrictions based on the identity of the speaker are all too often simply a means to control content."[130] Much like the government may not discriminate against certain disfavored views, it may not "impose restrictions on certain disfavored speakers."[131] Therefore, the corporate contribution ban should be subject to strict scrutiny,

119. United States v. Danielczyk, 788 F. Supp. 2d 472, 494 (E.D. Va. 2011), *rev'd*, 683 F.3d 611 (4th Cir. 2012).

120. *See id.* at 478–79.

121. *Id.* at 494.

122. *See* United States v. Danielczyk, 683 F.3d 611, 617–19 (4th Cir. 2012).

123. *See* FEC v. Beaumont, 539 U.S. 146, 163 (2003) (holding that corporate contribution bans are constitutional as applied to nonprofits).

124. *Danielczyk*, 683 F.3d at 615–19.

125. *Id.* at 617.

126. *See* Citizens United v. FEC, 558 U.S. 310, 354 (2010) ("By suppressing the speech of manifold corporations, both for-profit and nonprofit, the Government prevents their voices and viewpoints from reaching the public and advising voters on which persons or entities are hostile to their interests.").

127. *See id.* at 341–42.

128. United States v. Playboy Entm't Grp., Inc., 529 U.S. 803, 813 (2000).

129. *Citizens United*, 558 U.S. at 365.

130. *Id.* at 340. ("[T]he First Amendment stands against attempts to disfavor certain subjects or viewpoints. Prohibited, too, are restrictions distinguishing among different speakers, allowing speech by some but not others. As instruments to censor, these categories are interrelated . . . ." (citations omitted)).

131. *Id.* at 341.

and the government must bear the burden of showing that the ban is narrowly tailored to furthering a compelling governmental interest.[132]

B. Corporate Contribution Bans Fail Strict Scrutiny Because They Are Not Narrowly Tailored to the Interests They Ostensibly Serve

Corporate contribution bans will likely fail strict scrutiny because they are not narrowly tailored to a compelling governmental interest.[133] The Court in *FEC v. Beaumont* identified three governmental interests for distinguishing corporations from individuals in the context of campaign finance law: (1) the anti-corruption interest: corporations are better equipped to accumulate large contributions likely to result in corruption; (2) the shareholder-protection interest: corporations may make contributions to candidates or issues that shareholders oppose; and (3) the anti-circumvention interest: corporations may evade corporate contribution limits.[134] Although these interests are legitimate, this Subpart will demonstrate that corporate contribution bans are largely ineffective in achieving their desired goals.

1. The Anti-Corruption Interest

Contribution bans do not necessarily further the anti-corruption interest. The contribution ban was intended to prevent corporations from translating earnings into "political war chests" capable of facilitating quid pro quo corruption or creating the appearance of corruption.[135] Potential methods of bypassing the corporate contribution ban, such as the LLC loophole that states such as Iowa maintain, weaken the ban's ability to achieve the anti-corruption interest.[136]

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132. The most recent Supreme Court campaign finance decision, *McCutcheon v. FEC*, addressed the constitutionality of individual contribution limits. McCutcheon v. FEC, No. 12-536, slip op. at 1 (Apr. 2, 2014). Although the Court did not specifically apply strict scrutiny to these contribution restrictions, it did "assess the fit between the stated governmental objective and the means selected to achieve that objective," which comprises the foundation of strict scrutiny analysis. *See id.* at 10. The individual contribution cap sought to prevent corruption, but the *McCutcheon* Court limited the definition of corruption to require "a direct exchange of an official act for money." *Id.* at 2–3. Using this narrow definition of corruption, the Court concluded that the individual aggregate cap would be unconstitutional even under scrutiny less rigorous than strict scrutiny; thus, the Court did not identify whether strict scrutiny applied in *McCutcheon*. *Id.* at 10. However, the Court's application of de facto strict scrutiny to individual contribution limits supports this Note's argument that the corporate contribution ban should be subject to strict scrutiny.

133. *See, e.g.*, *id.* at 2; Ariz. Free Enter. Club's Freedom Club PAC v. Bennett, 131 S. Ct. 2806, 2817 (2011); *Citizens United*, 558 U.S. at 315 ("No sufficient governmental interest justifies limits on political speech of nonprofit or for-profit corporations."); McConnell v. FEC, 540 U.S. 93, 231–32 (2003); Preston v. Leake, 660 F.3d 726, 735 (4th Cir. 2011).

134. FEC v. Beaumont, 539 U.S. 146, 153–56 (2003).

135. *Id.* at 154.

136. *See supra* Part II.B.2.

Although a corporation may amass great resources, it does not necessarily follow that such wealth equates to corruption.[137] At least one district court has found that the threat of corruption cannot justify an outright ban on corporate contributions, while individual contributions may occur within limits.[138] In fact, Congress presumably created the limit on individual contributions with the same purpose of eliminating corruption. If that limit represents the maximum dollar amount that a donor can contribute without risking corruption, then it stands to reason that the same or a similar limit on corporate contributions will satisfy the governmental anti-corruption interest.[139] The guiding principle from *Citizens United*, that corporations have political speech rights equivalent to individuals, further supports the argument that corporations should have the opportunity to contribute within limits, just as individuals do.[140] After *Citizens United*, corporate contribution bans cannot stand when individual contributions are merely limited.

Further, the difference in donation recipients between independent expenditures and contributions does not support the governmental interests in anti-corruption. Both independent expenditures and contributions may result in corruption or the appearance of corruption, despite the *Citizen United* Court's failure to acknowledge independent expenditures' potential for corruption.[141] In fact, just a year before *Citizens United*, the Court held that a corporation's $3 million independent expenditure supporting a West Virginia judge's election campaign required the judge to recuse himself from a case in which the corporation was a party in order to avoid the appearance of corruption.[142] Thus, because *Citizens United* condemned identity discrimination and because corporate expenditure bans were found unconstitutional despite equivalent corruption concerns, contribution bans do not necessarily further the anti-corruption interest.

Even if corporate contribution bans further anti-corruption interests, they are not narrowly tailored to the anti-corruption interest because the bans prohibit all contributions from all corporations, regardless of the size of corporation or contribution. As a result, blanket contribution bans inhibit the political speech rights of even small corporations and inhibit modest

137. *Citizens United*, 558 U.S. at 357–60.

138. *See* United States v. Danielczyk, 788 F. Supp. 2d 472, 493–94 (E.D. Va. 2011), *rev'd*, 683 F.3d 611 (4th Cir. 2012) (citing Buckley v. Valeo, 424 U.S. 1 (1976) (per curiam), *superseded by statute*, Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (codified as amended in scattered sections of the U.S.C.), *invalidated by Citizens United*, 558 U.S. 310).

139. *See Buckley*, 424 U.S. at 29–30.

140. *Citizens United*, 558 U.S. at 353.

141. *Id.* at 357–59; *see also* Alexander Polikoff, *So How Did We Get into This Mess?: Observations on the Legitimacy of* Citizens United, 105 NW. U. L. REV. COLLOQUY 203, 219–21, 21 n.110 (2011) (noting that "[e]vidence that corporate independent expenditures give rise to an appearance of corruption is extensive," although the *Citizens United* Court did not provide support for its opposite claim).

142. *See* Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 872–74 (2009).

contributions, both of which are unlikely to result in corruption.[143] The majority of corporations are small businesses; as *Citizens United* acknowledged, "more than 75% of corporations whose income is taxed under federal law . . . have less than $1 million in receipts per year,"[144] and "96% of the 3 million businesses that belong to the U.S. Chamber of Commerce have fewer than 100 employees."[145] A blanket contribution ban is not narrowly tailored to anti-corruption because it blindly classifies all corporations as equally likely to engage in corruption without accounting for the small size of most corporations.

2. The Shareholder-Protection Interest

The shareholder-protection interest also fails to justify blanket corporate contribution bans. *Citizens United* found that the shareholder-protection interest is not a viable governmental interest[146] because shareholders and directors should resolve conflicts "through the procedures of corporate democracy."[147] If shareholder protection was a viable governmental interest, it "would allow the Government to ban the political speech even of media corporations," which the First Amendment clearly forbids.[148] Therefore, the shareholder-protection interest cannot support a blanket contribution ban.

3. The Anti-Circumvention Interest

Lastly, corporate contribution bans are not narrowly tailored to the governmental interest of anti-circumvention. The anti-circumvention interest refers to the government's interest in restricting corporations' ability to evade contribution limits.[149] For instance, a corporation may coordinate its political spending by donating to a political party with the understanding that the political party will nominate a particular candidate.[150] Donating to a political party may result in an even more immediate connection between a donor and candidate than a direct contribution because parties may become "matchmakers" and host events during which donors interact with candidates to further their political interests.[151] The anti-circumvention interest underscores a potential for corruption that the anti-corruption interest does not fully contemplate.

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143. *See* Zephyr Teachout, *The Anti-Corruption Principle*, 94 CORNELL L. REV. 341, 388–91 (2009).

144. *Citizens United*, 558 U.S. at 354 (citation omitted).

145. *Id.* (citing Supplemental Brief of Amicus Curiae Chamber of Commerce of the United States of America in Support of Appellant at 1–2, *Citizens United*, 558 U.S. 372 (No. 08-205)).

146. *Id.* at 360–61; *see supra* Part II.A.3.

147. *Citizens United*, 558 U.S. at 362 (quoting First Nat'l Bank of Bos. v. Bellotti, 435 U.S. 765, 794 (1978)).

148. *Id.* at 361.

149. FEC v. Beaumont, 539 U.S. 146, 155 (2003).

150. FEC v. Colo. Republican Fed. Campaign Comm., 533 U.S. 431, 433 (2001).

151. *Id.* at 435–36.

While anti-circumvention may be a compelling governmental interest, corporate contribution bans are not narrowly tailored to further such an interest. In the absence of blanket corporate contribution bans, corporations would not necessarily find it easier to bypass contribution limits. Although the Court noted that the "difficulty of identifying and directly combating circumvention under actual political conditions"[152] may warrant the maintenance of contribution bans, this statement was prior to *Citizens United*. Once *Citizens United* established the political speech protection of corporations,[153] the Court indicated that if contribution limits are adequate to quell anti-circumvention concerns for individual contributions, then they are also adequate to address the same concerns for corporate contributions. Thus, blanket contribution bans are broader than necessary to address anti-circumvention. Because corporate contribution bans are not narrowly tailored to address any of the three purported interests that the Government cites to justify them, corporate contribution bans fail strict scrutiny and, accordingly, are unconstitutional.

IV. CAMPAIGN FINANCE DISCLOSURE AS AN ALTERNATIVE TO CORPORATE CONTRIBUTION BANS

In light of the unconstitutionality of corporate contribution bans, intermediate disclosure of corporate contributions is the best alternative to regulate corporate contributions.[154] Intermediate contribution disclosure requirements are more legally defensible and practically useful for preventing the danger of political corruption and the other interests outlined in Part III.B.[155] Not only do disclosures avoid unconstitutional blanket bans on corporations while addressing corruption concerns, but they also reap additional benefits. For example, campaign finance disclosure increases the public's perception of a transparent government[156] and can thaw political speech instead of chilling it.[157]

152. *Beaumont*, 539 U.S. at 160–61 n.7 (internal quotation marks omitted) (citing *Colo. Republican Fed. Campaign Comm.*, 533 U.S. at 462).

153. *See Citizens United*, 558 U.S. at 341 (finding that "the Government may [not] impose restrictions on certain disfavored speakers").

154. *See* Richard Briffault, *Campaign Finance Disclosure 2.0*, 9 ELECTION L.J. 273, 273 (2010).

155. *See id.* at 279–86.

156. *See* Scott M. Noveck, *Campaign Finance Disclosure and the Legislative Process*, 47 HARV. J. ON LEGIS. 75, 101 (2010).

157. Michael D. Gilbert, *Campaign Finance Disclosure and the Information Tradeoff*, 98 IOWA L. REV. 1847, 1849 (2013).

A. THE CASE FOR DISCLOSURE

Dating back to *Buckley*, courts have evaluated the constitutionality of campaign finance disclosure requirements.[158] Opponents of disclosure criticize its potential to chill speech by revealing the identity of political speakers and, as a result, silencing speakers who wish to remain anonymous.[159] Despite disclosure requirements' chilling potential, *Buckley* held that three governmental interests supported individual contribution disclosure requirements: (1) the enforcement of contribution limits; (2) the deterrence of corruption; and (3) the supplying of information to voters.[160] Influenced by *Buckley* and its progeny, the Court has continuously held current federal disclosure requirements constitutional. *Citizens United* upheld corporate expenditure disclosure provisions, explaining that, particularly in light of widespread Internet communication, "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."[161]

Proponents laud disclosure for its ability to illuminate the dark backrooms of democracy and educate voters.[162] As Justice Brandeis opined, "[p]ublicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman."[163] Justice Brandeis's view supports increased disclosure. Other supporters of disclosure highlight its potential for "massive gains in democratic accountability."[164] Even the Supreme Court has concluded that "disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions . . . to the light of publicity."[165] Disclosure has a unique ability to promote voter education and awareness.

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158. Buckley v. Valeo, 424 U.S. 1 (1976) (per curiam), *superseded by statute*, Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (codified as amended in scattered sections of the U.S.C.), *invalidated by* Citizens United v. FEC, 558 U.S. 310 (2010) (recognizing "that compelled disclosure . . . can seriously infringe on privacy of association and belief guaranteed by the First Amendment").

159. *See id.* at 73–74 (explaining that disclosure can lead to "chill and harassment"); Gilbert, *supra* note 157, at 1855.

160. *See Buckley*, 424 U.S. at 66–68; *see also Citizens United*, 558 U.S. at 366–67 (explaining that disclosure requirements must stand up "to 'exacting scrutiny,' which requires a 'substantial relation' between the disclosure requirement and a 'sufficiently important' governmental interest" (quoting *Buckley*, 424 U.S. at 64, 66)); Gilbert, *supra* note 157, at 1856.

161. *Citizens United*, 558 U.S. at 370.

162. *See id.* (holding that the campaign finance disclosures of the BCRA are constitutional).

163. Louis D. Brandeis, *What Publicity Can Do*, HARPER'S WKLY., Dec. 20, 1913, at 10.

164. Kathleen M. Sullivan, *Against Campaign Finance Reform*, 1998 UTAH L. REV. 311, 326–27.

165. Buckley v. Valeo, 424 U.S. 1 (1976) (per curiam), *superseded by statute*, Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (codified as amended in scattered sections of the U.S.C.), *invalidated by* Citizens United v. FEC, 558 U.S. 310 (2010).

B. Developing an Intermediate Campaign Finance Disclosure System

Despite disclosure's myriad benefits, many questions surround its implementation. Disclosure laws must address how much information to disclose and how often to disclose it, as well as how to disclose information in an appropriately accessible way. An ideal campaign finance disclosure system would help citizens understand what individuals and entities support the field of candidates before they cast their votes, while also illuminating the myriad of financial interests sustaining candidates and elected officials.

The most effective campaign finance disclosure system would aggregate data into useful demographic statistics. Such an intermediate campaign finance disclosure system would most effectively prevent corruption and promote transparency. Conversely, a system requiring full disclosure of all available information and anonymous funding sources would result in reams of disclosures that would have no appreciable effect on public knowledge.[166] The benefit of campaign finance disclosure lies in its ability to aggregate virtually endless data points into a coherent summary of election spending habits.[167] An intermediate approach could present general reporting of donor distinctions, such as occupation, socioeconomic status, race, or geographic location. It could also compile aggregate reports to condense the

166. *See* Noveck, *supra* note 156, at 106–10. The campaign finance disclosure spectrum features full disclosure of all information on one end, and anonymous donations that conceal the identity of donors from even the candidates and elected officials on the other end. *See id.* at 100. In theory, full disclosure seems like an appealing way to educate voters about the identity of individuals seeking to influence candidates before the public votes. *Id.* at 101. However, a full disclosure system that reports the name and address of each donor does not effectively prevent corruption. *See id.* at 103–04. Full disclosure assumes that voters are willing or able to digest mountains of information and synthesize it into useful conclusions about candidates, a feat that is virtually impossible. *See id.* at 101–02. Further, truly all-inclusive disclosures would require extreme attention to detail in statutory language, to an extent which may not be possible. *Id.* at 102. For instance, a simple change in phrasing to the way that a donor must report its connections to corporations or other organizations may establish a loophole that large donors may be all too eager to exploit. *Id.* Finally, comprehensive disclosures may deter at least some individuals and organizations from engaging in political speech at all. *Id.* at 102–03. This problem may occur, for example, when a popular retailer that serves customers with a wide variety of political interests must avoid offending a portion of its clientele. At the other extreme, suppressing all campaign finance information presents obstacles, as well. In this scheme, all contributors would pass their funds through an intermediary, such as a government blind trust, which would disperse funds to candidates without revealing any identifying information about donors. *Id.* at 104. At its heart, a truly blind campaign finance system would eliminate the possibility of corruption, as it eliminates tools for confirming whether a particular donor or constituency donated any amount, much the same way that a secret ballot eliminates vote-buying. *Id.* at 105. However, the elimination of campaign finance disclosure also eliminates valuable data that is used for legitimate purposes, such as assessing the priority a certain contributor assigns to an issue. *Id.* Closing off campaign finance information may in fact help avoid corruption, but it does not establish the appearance of a transparent and open democracy, a virtue in itself to Justice Brandeis. *See* Brandeis, *supra* note 163, at 12–13.

167. Briffault, *supra* note 154, at 276.

overwhelming volume of information into a more useful and descriptive format, easily accessible on the Internet.[168]

Applying these disclosure principles to corporate contributions would allow for monitoring of contributions to help prevent corruption. If corporate contributions are legal because *Citizens United* renders their prohibition unconstitutional,[169] they will likely still face reasonable limits.[170] Although the FEC would regularly gather detailed information from individual corporations, it could publicly report collective and digestible information instead of releasing an overwhelming and inaccessible amount of data. To make this information most useful to prospective voters on the Internet, the FEC should classify the data into meaningful categories. For example, the FEC might report cumulative contributions from similarly sized corporations in a certain industry or within particular geographic regions. Alternatively, the FEC may study or survey users of its disclosure website to determine which groupings are most in demand. For instance, if citizens prioritized learning about the collective amounts that large corporations contributed, and to which candidates their contributions were directed, the FEC could emphasize that data. Because compiled data would be easier to understand and utilize, such an intermediate disclosure paradigm would help battle potential corruption resulting from reasonably limited corporate contributions.

This Note's proposed compromise between the all-or-nothing disclosure extremes—full disclosure of all information or complete lack of disclosure, even to the candidates receiving donations—constitutes a measured approach to informing citizens about the sources of money in politics. Disclosure educates citizens before they exercise their right to vote, while also helping prevent corruption. In this way, disclosure provides a crucial check on corporate contributions that may prove more effective than the current regime of problematic and unconstitutional corporate contribution bans.

V. CONCLUSION

While corporate contribution bans certainly attempt to address the important concern of preventing corruption in elections, they should be subject to strict scrutiny after *Citizens United*. Despite the Court's seeming

168. Noveck, *supra* note 156, at 106.

169. *See supra* Part II.A.3.

170. Individuals can only make contributions in federal elections under certain thresholds. *Contribution Limits 2013–14*, FED ELECTION COMM'N, http://www.fec.gov/pages/brochures/contriblimits.shtml (last visited Jan. 1, 2015). *Citizens United* eschewed identity discrimination. *See* Citizens United v. FEC, 558 U.S. 310, 341 (2010) ("We find no basis for the proposition that, in the context of political speech, the Government may impose restrictions on certain disfavored speakers."). Because *Citizens United* supports equal treatment of corporations, relative to individuals, once corporate contribution bans are held unconstitutional, corporate contributions would likely face thresholds as well.

reluctance to address the issue,[171] its decision in *Citizens United* indicates that it will apply strict scrutiny when considering future challenges to the corporate contribution ban. Blanket corporate contribution bans will not survive strict scrutiny, as they are not narrowly tailored to the governmental interests they seek to address.[172] Indeed, as Iowa's experience demonstrates, these corporate contribution bans lack practical effectiveness in combating corruption. In light of the ineffectiveness and unconstitutionality of contribution bans, establishing and strengthening disclosure laws better serves society's fundamental interest in protecting the fidelity of our political process while fostering political speech.

171. Robert Barnes, *Supreme Court Lets Ban Stand on Direct Corporate Campaign Donations*, WASH. POST (Feb. 25, 2013), http://www.washingtonpost.com/politics/supreme-court-lets-ban-stand-on-direct-corporate-campaign-donations/2013/02/25/ce3ab15c-7f85-11e2-b99e-6baf4ebe42df_story.html.

172. *See Citizens United*, 558 U.S. at 312.