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Corporate Tax Incentives And the Equal Protection Clause

by Justin T. Golart

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Introduction

The relationship between individuals and corporations has existed since the nation was founded.[1] Recently, however, the U.S. Supreme Court's holding in *Citizens United v. Federal Election Commission*,[2] along with the government and media response to the opinion, has placed a spotlight on that relationship. *Citizens United* was an unquestionable victory for corporate America, and it strongly reinforced the concept of corporate personhood.[3] The proper extent of corporate personhood is the subject of another debate. Instead, this report argues that along with the rights and privileges associated with legal personhood, corporations must also assume the *obligations* of natural persons under the Constitution. It argues that the practice of states allowing a select group of large corporations to operate without paying income tax not only exempts them from an obligation imposed on other corporations and natural persons, but it also discriminates against all but the largest and richest corporations. That inconsistent application of state tax law could be viewed as a violation of the equal protection clause of the 14th Amendment.

There are valid arguments on both sides of this question, and its resolution likely turns on what standard of review the courts would use in addressing it. The purpose of this report is to frame the debate in a way that suggests corporate tax incentives may not be as legally sound as their prevalence suggests. If nothing else, I hope to stimulate discussion regarding the legal status of corporations after *Citizens United*. This report is written from the perspective of someone who takes the Supreme Court at its word regarding corporations and rejects accusations that the Court will side in favor of corporations regardless of the matter.[4]

I. Corporate Tax

A. The Corporate Income Tax

Corporate income is taxed in almost all states,[5] despite the corporate income tax being "among the most complicated and controversial components of state revenue systems."[6] Although it would seem that taxing corporate income should be an obvious boon for state governments during difficult economic times, the actual effect of the corporate income tax is less encouraging. Because corporations have the resources to plan around tax matters, "corporate income taxes make up a surprisingly small portion of state revenues."[7]

> ***Corporate tax incentives may not be as legally sound as their prevalence suggests. They could be viewed as a violation of the equal protection clause.***

There are a variety of justifications for the corporate income tax. One of the more compelling is based on the benefits theory of taxation, which suggests corporations should "reimburse the states for the

[1]*See* Chief Justice John Marshall's assertion that "our ideas of a corporation, its privileges and disabilities, are derived entirely from the English [law]." *Bank of United States v. Deveaux*, 9 U.S. (5 Cranch) 61, 88 (1809).

[2]*Citizens United v. Federal Election Comm'n*, 130 S.Ct. 876 (2010).

[3]*See* Atiba Ellis, "*Citizens United* and Tiered Personhood," 44 *J. Marshall L. Rev.* 717 (2011).

[4]*See generally* Warren Richey, "At Supreme Court, Another Ruling in Favor of Corporations, Critics Say," *The Christian Science Monitor* (2011), *available at* http://www.csmonitor.com/USA/Justice/2011/0427/At-Supreme-Court-another-ruling-in-favor-of-corporations-critics-say.

[5]David Brunori, *State Tax Policy, A Political Perspective* (2011), at 95.

[6]*Id.*

[7]*Id.* at 95-96.

significant services provided to the business community."[8] That is consistent with the idea that corporations are distinct legal entities that should pay their fair share for social services, above and beyond what is paid out of the personal income taxes of shareholders.

Those that believe corporations should pay their fair share have been dismayed to see corporations paying less in taxes while their profits are increasing.[9] That disparity prompted one commentator to state that "Ben Franklin said: 'In this world, nothing can be said to be certain, except death and taxes.' For corporations, though, neither is true."[10] Many of us do not view corporations as inherently good or bad. Rather, we view them as creations of law that should be expected to adhere to all laws of the legislatures that created them. Obviously, there are some laws that apply only to natural persons. However, tax laws seem to be the quintessential example of exactly the type of law corporations should be bound by.

B. Tax Incentives

That the revenue generated by the corporate income tax is relatively small is not entirely the result of the deft maneuvering of corporate lawyers. In many cases, state governments give tax breaks to corporations in order to entice them to come to, or stay in, the state. That practice, which has been described as "pervasive,"[11] is designed to encourage economic development through creating jobs and encouraging investment. Tax incentives are so widespread that states have entered into a sort of bidding war for corporate presence. Because states are so willing to offer tax incentives, they "create an atmosphere that encourages companies to seek the same tax preferences offered to other companies."[12]

The practice of state governments offering tax incentives is in clear opposition to the concept of a free market. The government is determining which businesses will benefit and, as a result, which benefits will be burdened by state taxes. Free market economics demands that business winners and losers be determined by the market instead of by the state:

> Bureaucrats just aren't smart enough to outthink the marketplace. The idea that government officials can somehow survey the economic landscape, comprehend it in all its detail, and then improve it in a way that would leave everyone better off is the "fatal conceit" of central planners.[13]

Tax incentives also raise issues of fairness for businesses that do not benefit from them. For example, in the 1990s Alabama persuaded Mercedes-Benz to open a manufacturing plant in its state by offering it over $250 million in corporate tax breaks.[14] Regardless of whether Alabama's lost tax revenue ended up being offset by increased jobs and economic activity, the decision was fundamentally unfair to other businesses located in the state. Even though the automobile industry is dominated by large corporations (there were probably no mom and pop car manufacturers in Alabama to compete with Mercedes-Benz at the time), businesses in Alabama were surely affected by the tax incentives offered to Mercedes-Benz. Small businesses had enough of an uphill climb to keep skilled labor from fleeing to Mercedes-Benz without Mercedes-Benz's ample resources being made even more formidable through a generous tax code. It doesn't take a bleeding heart to find unfairness in a small business being compelled to pay corporate income taxes while a behemoth automobile manufacturer is exempt.

This unfairness is not seen only when comparing Mercedes-Benz to other businesses. A company that large surely benefits greatly from services, such as roads, that are provided by the state. Even if some Alabama residents saw their lifestyles improve with the arrival of Mercedes-Benz and the jobs it brought with it, all taxpaying Alabamans were compelled to finance state services provided to Mercedes-Benz. When a state singles out the largest and most wealthy "person" residing within its borders for financial benefits that aren't offered to anyone else, what results is a system that any neutral observer would have to describe as unfair.

II. The Constitutional Rights of Corporations

A. Overview

Corporations have been granted legal rights in the United States for a long time.[15] Those rights include suing, acquiring, and disposing of real property, and entering into contracts.[16] In the post-*Citizens United* era, corporations also benefit from nearly the same free speech rights as natural persons.[17] In *Citizens United*, the Supreme Court made it clear that the First Amendment is applicable to

[8] *Id.* at 98.

[9] Bureau of Economic Analysis news release 12-11 (Mar. 29, 2012), at 4-5.

[10] Alan Grayson, "No More Corporate Tax Breaks," (Apr. 18, 2012), *available at* http://my.firedoglake.com/alangrayson/2012/04/18/no-more-corporate-tax-breaks/.

[11] Brunori, *supra* note 5, at 100.

[12] *Id.* at 101.

[13] Michael D. LaFaive, "Targeted Tax Incentives Unnecessary, Ineffective," *Budget and Tax News* (July 2006).

[14] Brunori, *supra* note 5, at 101.

[15] Phillip Blumberg, *The Multinational Challenge to Corporate Law*, at 4.

[16] *Id.*

[17] *Citizens United*, 130 S.Ct. at 886 (2010).

corporations. Well over a century earlier, the Supreme Court held in *County of Santa Clara v. Southern Pac. R. Co.* that corporations are protected by the 14th Amendment.[18] However, the exact extent of that case's holding regarding the 14th Amendment's equal protection clause has not been universally accepted.

B. Corporations and the 14th Amendment's Equal Protection Clause

Santa Clara County is frequently cited as authority that the equal protection clause applies to corporations.[19] However, over 60 years later, Justice William Douglas articulated lingering questions that had existed since *Santa Clara County* was decided. In his dissent in *Wheeling Steel Corp. v. Glander*,[20] Douglas directly challenged the legitimacy of *Santa Clara County* in this area. After acknowledging that "it has been implicit in all of [the Court's] decisions since 1886 that a corporation is a 'person' within the meaning of the Equal Protection Clause of the Fourteenth Amendment,"[21] Douglas sarcastically highlighted the strange way that this legal "rule" came into existence:

> The Court was cryptic in its decision. It was so sure of its ground that it wrote no opinion on the point, Chief Justice [Morrison Remick] Waite announcing from the bench: "The Court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution, which forbids a State to deny to any person within its jurisdiction the equal protection of the laws, applies to these corporations. We are all of the opinion that it does." There was no history, logic, or reason given to support that view. Nor was the result so obvious that exposition was unnecessary.[22]

When Waite simply asserted that the equal protection clause applied to corporations, he foreclosed discussion of a question that was unsettled at the time. The 14th Amendment was ratified in 1868. Three years later, a New York corporation claimed that Louisiana had violated the equal protection clause by empowering New Orleans to impose a tax on it that was not imposed on Louisiana businesses.[23] Justice William Burnham Woods, who at the time was a circuit judge, had to answer the question whether the New York corporation was protected by the 14th Amendment.

It does not seem that Woods struggled with the question. After reiterating long-standing precedent holding that corporations were not citizens for purposes of the Constitution's privileges and immunities clause,[24] he stated that it was "clear . . . that a corporate body is not a citizen of the United States as that term is used in the 14th Amendment."[25] In 1871 the Supreme Court reiterated the stance that the 14th Amendment was drafted with recently freed black slaves in mind[26] and that its purpose was to "protect . . . human beings."[27] However, these contemporaneous analyses were not mentioned in 1886 when the *Santa Clara County* Court proceeded on the assumption that the equal protection clause does in fact apply to corporations.

The reader may be wondering why I have devoted time to arguments that the 14th Amendment does not apply to corporations, when I articulated at the outset that this report asserts the 14th Amendment *does* apply to them. It is important to note the context of the litigation in *Santa Clara County* and *Wheeling Steel Corp.* Both cases involved corporations claiming protection under the equal protection clause against state taxes that they believed discriminated *against* them. So, while I agree that the 14th Amendment should apply to corporations, I do so understanding that in this area the most consistent aspect of the Supreme Court's decisions, all the way through *Citizens United*, is that corporations consistently win. Persuading the Court to rule against corporate interests in a landmark case is a daunting task.

The Court has invoked the equal protection clause to ensure states do not discriminate *against* corporations, but it has not prevented states from passing tax incentive legislation that discriminates *in favor of* corporations. States are able to make this distinction by the rational basis standard of review that the Court applies to equal protection clause challenges. Because many laws draw distinctions between classes of people (for example, a law limiting the availability of a driver's license to those that are at least 16 years old), rational basis review asks only whether the government's classification is rationally related to a legitimate government purpose.[28] That is a highly deferential standard of review.

However, not all equal protection challenges are decided using the rational basis standard of review. If the group that is discriminated against by the

[18] *County of Santa Clara v. Southern Pac. R. Co.*, 118 U.S. 394 (1886).

[19] Richard Pomp, *State and Local Taxation*, 7th ed. at 2-1 (2011).

[20] *Wheeling Steel Corp. v. Glander*, 337 U.S. 562 (1949).

[21] *Id.* at 576 (Douglas, J., dissenting).

[22] *Id.* at 576-577.

[23] *Insurance Co. v. City of New Orleans*, 13 F.Cas. 67 (1870).

[24] *See Bank of Augusta v. Earle*, 38 U.S. 519 (1839).

[25] *Insurance Co. v. City of New Orleans*, 13 F.Cas. at 68.

[26] *Slaughterhouse Cases*, 83 U.S. 36.

[27] *Wheeling Steel Corp. v. Glander*, 337 U.S. at 578 (Douglas, J., dissenting).

[28] Edwin Chemerinsky, *Constitutional Law: Principles and Policies* (3rd ed.), at 669.

legislation is considered a suspect class, the courts will apply a heightened standard of review. If the discrimination is based on race or national origin, the standard of review jumps from the most deferential to the most demanding — strict scrutiny.[29] Under strict scrutiny, a law is upheld only if it is "proved necessary to achieve a compelling government purpose."[30] If the discrimination is based on gender, a court applies intermediate scrutiny, which requires only an important government purpose.[31] Thus, under current equal protection clause analysis, the standard of review applied by the courts is nearly become a dispositive factor.[32]

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III. The Legal Fiction of 'Horizontal Equity'

The term "horizontal equity" is used to define the idea that "a tax system should treat similarly situated taxpayers the same," and that "persons and businesses with similar incomes and assets should be taxed alike."[33] That important notion is described as "imperative in a democratic society."[34] Equality under the law is an extremely American concept. In addition to the Constitution's equal protection clause, the Declaration of Independence asserts that "all men are created equal," and the highest court in the land is housed in a building bearing the inscription "Equal Justice Under Law." Simply put, equality in the eyes of the law is at the foundation of the United States.

Having said that, I think most of us don't really believe that true horizontal equity is an attainable goal. As Susanna Kim Nelson wrote:

> The conception of horizontal equity not only requires that one answer the question of what "the same situation" means across units, but also, more fundamentally, that one determine a proper unit across which to make the comparison. The notion of horizontal equity requires a belief in a fundamental similarity among the units being compared, something that is much easier envisioned in the abstract, than in concrete cases.[35]

I believe that although horizontal equity is desirable, what we really want and demand is for our laws to not contribute to the distortion of what we know is an uneven playing field.

For example, a state tax law would view two people living next door to each other, both married with no children, and both earning $50,000 per year, as "similarly situated." Horizontal equity demands that before accounting for deductions and credits, those two people pay the same amount in taxes. But in reality, the first person may have worked her way up the ladder of success to the point at which her two jobs generate a total of $50,000 per year, while the second person may have never had to compete for a job in his life because he worked for his wealthy father who refused to reward his poor work with a dime over $50,000 per year. Are these two people similarly situated? Under the law they are, and they should be. However, just because we treat these two people as similarly situated under the law, we should not allow ourselves to believe that horizontal equity has actually been achieved. Simply put, no two people are *ever* exactly similarly situated.

Horizontal equity should be viewed as a type of legal fiction, albeit one that, if it is accepted, benefits society. In this way, it is similar to the belief that a jury's determination of guilt beyond a reasonable doubt means the defendant actually committed the crime. Even if we know that juries can and do make mistakes, we accept this legal fiction because to reject it would be to reject the entire criminal justice system and accept the resulting chaos.

If horizontal equity is truly imperative in a democratic society, it should lead to an all-out rejection of targeted corporate tax incentives. Not only are similarly situated businesses being treated differently by the law, but the advantage is usually given to stronger and wealthier companies that are likely large enough to generate a significant number of jobs and sufficiently stimulate the local economy.

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[29] *Id.* at 671.

[30] *Id.*

[31] *Id.*

[32] Rational basis review does not always mean the Court will uphold a law. In *Romer v. Evans*, 517 U.S. 620 (1996), the Court struck down a provision of the Colorado Constitution that prohibited government action designed to protect homosexuals. The Court did not make homosexuals a suspect class, but instead found that the provision in Colorado's Constitution failed rational basis review.

[33] Brunori, *supra* note 5, at 17.

[34] *Id.*

[35] Lynn Hankinson Nelson, *Feminism, Objectivity, and Economics* (1996), at 97.

IV. Corporate Tax Incentives Violate Equal Protection

A. Corporate Personhood

Corporate personhood has reached a new place of prominence since the *Citizens United* decision.[36] As a result, it seems the legality of corporate tax incentives should be riper for challenge than in previous years. As the legal system continues to view corporations as distinct legal persons in more and more situations, it seems that corporations have less ground to stand on when seeking to justify the preferential treatment they receive.

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The prevailing view of corporate personhood has shifted over time. Originally, corporations were seen as "artificial and dependent persons" that "cannot exist without the law's consent."[37] In the 19th century, a new belief arose that corporations were "aggregate persons" and "a collection . . . of individuals who contracted with each other to utilize the corporation for their mutual benefit."[38] In the 20th century, the "real entity" approach to corporate personhood became prevalent.[39] That view sees the corporation as "an undeniably real and nonimaginary person."[40] Now, in the 21st century, it seems that the real entity approach to corporate personhood has gained legitimacy, especially after *Citizens United*.

The view that society takes of corporate personhood is important for an equal protection clause analysis. If the traditional view of corporations as artificial or dependent persons is taken, corporate tax incentives are not as problematic. Since, under that view, the corporation's rights are entirely created and determined by the state, there is more latitude for the belief that different tax burdens can be imposed on different corporations at the discretion of the state. But the Supreme Court has embraced the view that corporations are real entities, and if corporations are going to be treated as if they were natural persons, we should require them to accept all the consequences of personhood instead of allowing them to pick and choose when they desire to play the personhood card.

B. Framing the Discussion

When corporate tax incentives are justified, they are typically described as job-creating measures that will spur economic growth. However, for the majority of citizens, who are already working and will not benefit directly from the business's move to the state, tax incentives are just as easily characterized as laws that discriminate against businesses that don't receive similar tax breaks. The difference between an incentive and an unfair exemption from state tax law is in the eye of the beholder.

It is admittedly uncommon to criticize laws because they discriminate against the majority. However, what constitutes a majority is not always as simple as counting heads or businesses. Even if all natural persons are created equal, all corporate persons are definitely not created equal. When Mercedes-Benz moved into Alabama, it did not become just one of many corporations doing business within the state. It instantaneously moved into a position of influence and power based on its size and financial strength. In a way, small businesses that are required to pay corporate income tax while their wealthy competitors receive a free ride have become a type of "discrete and insular minority" that the law should seek to protect.[41]

C. Standard of Review

If corporate tax incentives are challenged under the equal protection clause, the success of the challenge will largely depend on the standard of review that the court uses. If rational basis review is used, the laws will almost surely be upheld. If a higher level of scrutiny is used, there is a good chance that the laws will be struck down. A recent example highlights the importance of this issue. In 2004 the Sixth Circuit heard a case that challenged Ohio's tax exemption provisions under the Ohio Constitution's equal protection provision.[42] The case centered on a 1998 agreement between DaimlerChrysler and the city of Toledo.[43] DaimlerChrysler had agreed to build a new vehicle assembly plant in an economically depressed area of Toledo in exchange for tax

[36]Ellis, *supra* note 3, at 717.

[37]Susanna Kim Ripken, "Corporations Are People Too: A Multi-Dimensional Approach to the Corporate Personhood Puzzle," 15 *Fordham J. Corp. & Fin. L.* 97, 106 (2009).

[38]*Id.* at 109-110.

[39]*Id.*

[40]*Id.*

[41]*See U.S. v. Carolene Products Co.*, 304 U.S. 144, 153 (1938). (In footnote 4, the Court suggested that rational basis review may not be strong enough if a law discriminated against discrete and insular minorities.)

[42]*Cuno v. DaimlerChrysler, Inc.*, 386 F.3d 738 (2004).

[43]*Id.* at 741.

incentives and exemptions that totaled approximately $280 million.[44] The petitioners in the case were a group of individual taxpayers and small business owners.

In *Cuno*, the Sixth Circuit rejected the petitioners' challenge, affirming the district court's application of the rational basis standard of review and holding that "the benefits conferred by the investment tax credit and property tax exemption are rationally related to . . . [Ohio's] legitimate interest in revitalizing economically troubled areas in order to eliminate problems frequently associated with urban blight."[45] Ultimately, once the Sixth Circuit agreed that rational basis review was proper, the challengers' equal protection claim was doomed.[46] As applied by the Sixth Circuit, the rational basis standard of review requires a statute to be "upheld against equal protection challenge if there is *any reasonably conceivable state of facts* that *could provide* a rational basis for the classification."[47]

The lesson from *Cuno* is that for an equal protection challenge to state tax incentives to succeed, it must either convince the reviewing courts to apply a heightened standard of review, or provide strong data refuting the state's asserted rational basis for enacting the law. I believe there are arguments to be made on both fronts.

i. Heightened Standard of Review

When states offer tax breaks to large corporations, those states collaterally discriminate against small businesses. However, as stated earlier, a state is required only to have a rational basis for discriminating against a class of persons, unless that class is viewed as a suspect class by the courts. Convincing the courts to apply a heightened standard of review is a daunting task. The Supreme Court "has shown little willingness in the past three decades to subject additional classifications to strict or intermediate scrutiny."[48] When the Supreme Court has applied heightened scrutiny, there are several criteria that seem important in determining which groups are viewed as suspect classes. First, "the Court has emphasized that immutable characteristics like race, national origin, [and] gender . . . warrant heightened scrutiny."[49] The Court also considers the ability of the group to protect itself through the political process and the history of discrimination against the group when making its determination.[50]

Although small business owners have not traditionally been thought of as a suspect class, that question is ripe for reconsideration in the aftermath of *Citizens United*. Status as a small business owner is unlikely to be viewed as an immutable characteristic by the courts (nobody is born as a small business owner), but the large grant of power to large corporations in *Citizens United* has dramatically lessened the ability of small business owners to protect themselves through the political process. Also, as more corporations are offered targeted tax breaks, the history of discrimination against small business owners continues to be written with each passing year.

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The primary criticism of *Citizens United* is that it will lead to elected officials being controlled by the wealthy corporations that finance their campaigns. The Court acknowledged as much, stating that "favoritism and influence are not . . . avoidable in representative politics. It is in the nature of an elected representative to favor certain policies, and, by necessary corollary, to favor the voters and contributors who support those policies."[51] The large corporations that finance elections are likely to be the same corporations that receive tax breaks from state governments. With those large businesses unshackled by *Citizens United*, small business owners as a class now have a diminished ability to protect their interests through the political process.

The history of discrimination against small business owners may be a fairly recent phenomenon, but it seems that should make the discrimination even more noteworthy for courts when determining whether to apply a heightened standard of review. Current tax breaks for large corporations are writing the history of discrimination against small businesses. It seems unfair to make small businesses endure decades of discrimination before they reach the nebulous "history of discrimination" qualification that invokes a heightened standard of review.

In sum, there are multiple reasons to treat small businesses as a suspect class for the purpose of equal protection challenges. However, the Court's unwillingness to extend suspect classification beyond traditional categories like race, national origin, and

[44] *Id.*
[45] *Id.* at 748-749.
[46] The *Cuno* case made its way to the Supreme Court, but not on the equal protection issue.
[47] *Cuno, supra* note 42, at 748 (emphasis added).
[48] Chemerinsky, *supra* note 28, at 672.
[49] *Id.*
[50] *Id.*
[51] *Citizens United*, 130 S.Ct. at 910 (quoting *McConnell v. Federal Election Com'n*, 540 U.S. 93 (2003)).

gender reduces the chances of that argument's success. Also, the conservative influence on the current Court makes it unlikely that a new suspect class will be created.

ii. Lack of a Rational Basis

If small businesses are unable to convince the courts to extend heightened scrutiny to their claim, they can still argue that state tax incentive laws fail rational basis analysis. Small business owners would have to convince the Court that state tax incentive laws lack a rational basis in the same way homosexuals successfully argued against a rational basis in the Colorado Constitution in *Romer v. Evans*.[52]

> ***With large businesses unshackled by* Citizens United*, small business owners as a class now have a diminished ability to protect their interests through the political process.***

In order for a state's basis in enacting a law to be rational, "the relationship of the classification to its goal [must not be] so attenuated as to render the distinction arbitrary or irrational."[53] Consider that not all businesses that have been offered tax breaks by states have chosen to accept them. In 2006 Gander Mountain, at the time the number three outdoor sporting goods retailer in the nation, launched a national lobbying and public relations campaign to deny incentives that were being offered to it and its two larger competitors, Cabela's and Bass Pro Shops.[54] The CEO of Gander Mountain's developer argued that granting tax breaks to some businesses was unfair and would lead to a slippery slope:

> If you give [a tax break] to a Wal-Mart, should you give it to Target? If you give it to Home Depot, then should you give it to Lowe's? And if you give it to Bass Pro, shouldn't you give it to Cabela's and Gander Mountain? How about we just don't give it to anybody?[55]

The irrationality that Gander Mountain identified is backed up by data indicating that targeted tax incentives are ineffective.[56] A study found that a Michigan tax incentive program created one job for every $123,000 in tax breaks that was granted. After two years, all the new jobs had disappeared.[57] That is one example of a broad argument that state tax incentive laws are not achieving the job growth, economic development, and reduction of blight that are used to justify the laws' discrimination against small businesses.

Conclusion

The argument that targeted tax incentives are unconstitutional under the equal protection clause of the 14th Amendment is admittedly an aggressive one. Although it's unlikely to succeed in the near future, strong arguments do exist that could form the basis for a challenge in the future. If the composition of the Supreme Court changes over time to a lineup that is more likely to extend the borders of suspect classifications, small business owners have a strong case that these discriminatory laws should be subject to heightened scrutiny.

In the short term, the more logical approach is to conduct studies and collect data demonstrating that there is no rational basis for states to offer tax breaks to select corporations. A skeptic would likely conclude that tax incentives are more related to continued financial support of elected leaders than they are to job growth and economic development. Although both arguments, in their current forms, are not slam-dunk cases, the Supreme Court's decision in *Citizens United* is an excellent starting point for holding corporations to the same standard as natural persons and saying that corporations cannot pick and choose when they wish to be treated as natural persons. To ignore that argument is to accept the consequences of *Citizens United* that empower corporations without demanding the consequences that hold them accountable. ☆

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[52]*Romer v. Evans*, 517 U.S. 620 (1996).
[53]*Cuno*, *supra* note 42, at 748.
[54]Greg LeRoy, "Major Retailer Challenges Tax Incentives," *Budget and Tax News*, July 2006.
[55]*Id.*
[56]LaFaive, *supra* note 13.
[57]*Id.*