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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

HELENA DIVISION

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|---|---|
| CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, MONTANA CHAMBER OF COMMERCE, BILLINGS CHAMBER OF COMMERCE, and KALISPELL CHAMBER OF COMMERCE,<br><br>Plaintiffs,<br><br>v.<br><br>AUSTIN KNUDSEN, in his official capacity as Attorney General of Montana, and CHRISTI JACOBSEN, in her official capacity as Montana Secretary of State,<br><br>Defendants. | CIVIL NO. 6:26-CV-75 |

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

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## INTRODUCTION

Montana has attempted yet again to end run settled First Amendment law. After the Supreme Court held in *Bellotti* and *Citizens United* that the First Amendment protects corporate political advocacy, Montana previously tried to ban any corporate expenditure "that supports or opposes a candidate or political party." *Am. Tradition P'ship, Inc. v. Bullock*, 567 U.S. 516, 516 (2012) (per curiam). But the Supreme Court summarily rejected that attempt as foreclosed by *Citizens United*. *Id.* at 516–17. And when Montana's voters tried to ban corporate expenditures on ballot issues, the Ninth Circuit struck that law too. *Mont. Chamber of Com. v. Argenbright*, 226 F.3d 1049, 1057–58 (9th Cir. 2000).

Now, Montana tries again. On November 3, 2026, by Initiative No. 194, Montana enacted the Montana Plan Act ("I-194") (Ex. A), *available at* https://tinyurl.com/bddfucss, in an attempt to accomplish indirectly what it could not do directly. The State purports to redefine corporate powers to exclude election and ballot-question advocacy. But constitutional rights do not disappear when individuals associate through a corporation. Montana cannot evade the First Amendment by recasting a speech ban as a limitation on corporate power.

I-194 is unconstitutional. Most obviously, it bans core political speech. I-194 prohibits corporations and other entities from supporting or opposing candidates, political parties, political committees, and ballot measures. It discriminates based

on content, viewpoint, and speaker identity. It rests on an asserted governmental interest the Supreme Court has repeatedly rejected: reducing the influence of disfavored speakers so that other voices carry greater relative weight. And it is not remotely tailored, sweeping into its prohibition nearly all forms of voluntary associations, including foreign entities that Montana did not create, while exempting favored speech by media corporations.

I-194 also independently fails as a textbook unconstitutional condition on the corporate form. Montana expressly declares that corporate existence and authority to do business are merely conditional privileges subject to withdrawal. The State then conditions those privileges on surrendering the First Amendment right to engage in political advocacy: speak, and the corporation is effectively dissolved; seek reinstatement, and it must certify that it will not speak again. But the First Amendment prohibits Montana from conditioning corporate existence or the authority to do business on the surrender of speech rights.

Plaintiffs and their members face immediate and irreparable harm if I-194 is not preliminarily enjoined. The initiative takes effect on January 1, 2027, just seven weeks from now. And already, the threat of I-194 and its severe penalties impair Plaintiffs' and their members' ability to plan for participation in the 2027-2028 election cycle. Because Plaintiffs are overwhelmingly likely to succeed on the

merits, and will suffer irreparable harm in the interim, the Court should enjoin I-194's enforcement before the law takes effect on January 1, 2027.

## BACKGROUND

Plaintiffs are the U.S. Chamber of Commerce, the Montana Chamber of Commerce, the Billings Chamber of Commerce, and the Kalispell Chamber of Commerce. They bring this suit because they, their members, or both participate in Montana's political process by expending funds to support or oppose candidates, political parties, political committees, and ballot questions. *See* Eyler Decl. (U.S. Chamber) (Ex. B) ¶¶ 14–19; O'Hair Decl. (Montana Chamber) (Ex. C) ¶¶ 9–14; Brooks Decl. (Billings Chamber) (Ex. D) ¶¶ 9–14; Clarno Decl. (Kalispell Chamber) (Ex. E) ¶¶ 9–11; Christensen Decl. (member company) (Ex. F) ¶¶ 7–10.

I-194 strikes directly at that advocacy. Enacted in 2026 and effective January 1, 2027, I-194 withdraws from artificial persons "political spending power," defined as "the legal capacity to pay, contribute, or expend money or anything of value to support or oppose" candidates, political parties, political committees, initiatives, referendums, recalls, constitutional amendments, and other items put to the electorate for a vote. § 3(4); *see also* § 3(2). And it provides that a corporation may not "expend money or anything of value to support or oppose the outcome of a vote of the electorate." § 4(1); *see also* §§ 6, 9, 10. It expressly "condition[s] … state-

conferred legal status and charter privileges" on corporate abstinence from political spending. § 4(2).

I-194's reach is sweeping. It extends its political-speech prohibition against every "artificial person," defined as an "entity whose existence, legal status, or limited liability shield is conferred by the laws of the state of Montana, including an entity organized or existing under the laws of another jurisdiction that is authorized to transact business, is otherwise transacting business, or holds property in Montana." § 3(1); *see also* §§ 5(1), 5(3). This broad definition extends I-194's political-speech prohibition to virtually every form of voluntary association from businesses and partnerships to charities and labor unions. *See ibid.* It also reaches both domestic and foreign businesses alike. *See ibid.*; *see also* § 5(2).

I-194's penalties are harsh. Artificial entities that engage in political speech automatically "forfeit[ ] all charter privileges," § 7(1)–(2), defined to reach "any legal benefit that exists only because the state of Montana confers it on an artificial person," § 3(3). In other words, an artificial person's very existence is forfeit if it engages in political speech. Reinstatement is conditioned on, *inter alia*, "disgorgement" and "certification of future compliance" with I-194's political-speech prohibitions. § 7(4). I-194 also vests the Attorney General with authority to bring enforcement actions for injunctive and declaratory relief, and directs the

Secretary of State to adopt rules and procedures "governing forfeiture, reinstatement, disgorgement, [and] certification of compliance." § 8.

The campaign for I-194 was explicit about the perceived problem it sought to address. I-194's proponents complained that Montana's elections had been "flooded and distorted" by corporate speakers who showed "no regard for the truth" or for "issues Montanans face every day," including healthcare, housing, taxes, schools, utility bills, and public lands. Mont. Sec'y of State, *Montana Voter Information Pamphlet* 27 (2026), https://tinyurl.com/29w7z774, ("SOS Voter Pamphlet"). The proponents further criticized corporate political advocacy as insufficiently "helpful for voters trying in good faith to determine the best candidate to serve the public good." *Id.* at 24. The Montana Plan PAC, YES On I-194's official campaign committee, likewise criticized artificial persons for "push[ing] for rules that protect their bottom line." The Montana Plan PAC, *I-194 Explained*, https://tinyurl.com/bdhfn4vp, ("I-194 Explained"). The committee even singled out Plaintiff "the Chamber of Commerce," criticizing its support for "lower taxes" rather than "a fair tax system." *Ibid.*

Unless enforcement is enjoined before the law's January 1, 2027, effective date, *see* § 14, I-194 will prevent Plaintiffs and their members from engaging in their planned advocacy. Plaintiffs therefore seek preliminary relief to preserve their First Amendment rights pending final judgment.

## STANDARD OF REVIEW

A preliminary injunction is warranted when the plaintiff shows: (1) likelihood of success on the merits; (2) likelihood of irreparable harm absent preliminary relief; (3) that the balance of equities tips in its favor; and (4) that an injunction is in the public interest. *See Nw. Ass'n Indep. Schs. v. Labrador*, 166 F.4th 1148, 1156 (9th Cir. 2026) (citing *Winter v. NRDC*, 555 U.S. 7, 20 (2008)).

## STANDING

Courts apply standing requirements "less stringently" to "restrict[ion]s [on] First Amendment right[s]." *Imperial Sovereign Ct. of Mont. v. Knudsen*, 170 F.4th 820, 834 (9th Cir. 2026) (cleaned up). And "[i]f at least one plaintiff has standing, the suit may proceed." *Biden v. Nebraska*, 600 U.S. 477, 489 (2023). Here, all four plaintiffs have direct standing, associational standing, or both.

The Montana Chamber, Billings Chamber, and Kalispell Chamber each have direct standing to challenge I-194. They contribute funds and other resources to support or oppose Montana candidates, committees, parties, and ballot questions. O'Hair Decl. ¶¶ 9–11; Brooks Decl. ¶¶ 9–14; Clarno Decl. ¶¶ ¶¶ 9–11. They do so to ensure that their voices and those of the Montana business community are heard on issues affecting Montana businesses and the State's economy. O'Hair Decl. ¶ 6; Brooks Decl. ¶¶ 7, 9, 13; Clarno Decl. ¶¶ 7, 10. They intend to continue this political expression going forward, including in the 2027-2028 election cycle but, absent an

injunction, will forgo that speech because it violates I-194 and so would expose them to significant penalties, including the loss of their ability to operate in the State. O'Hair Decl. ¶¶ 15–19; Brooks Decl. ¶¶ 14–19; Clarno Decl. ¶¶ 11–19. That "[s]elf-censorship qualifies as injury-in-fact" because the Chambers' planned, constitutionally protected speech is "proscribed by" I-194, and Montana has not "disavow[ed] enforcement." *Imperial*, 170 F.4th at 834–35; *see also Matsumoto v. Labrador*, 122 F.4th 787, 797–98 (9th Cir. 2024) (similar). Because the Chambers' injuries are caused by I-194, they would be redressed by an injunction preventing its enforcement. *See Matsumoto*, 122 F.4th at 799–802.

The U.S. Chamber and the Montana Chamber each have associational standing to challenge I-194 because: (1) they have members that "would otherwise have standing to sue in their own right," (2) "the interests [they] seek[ ] to protect are germane to [their respective] purpose[s]," and (3) "neither the claim[s] asserted nor the relief requested require[ ] the participation of individual members." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 199 (2023). *First*, the Chambers represent members who have standing because they will imminently be forced to self-censor planned advocacy to avoid violating I-194. *See* Eyler Decl. ¶¶ 14–19; O'Hair Decl. ¶¶ 15–19; *accord* Christensen Decl. ¶¶ 9–16. *Second*, ensuring businesses have a seat at the table in the political arena and protecting their members' right to speak—the interests Plaintiffs seek to protect

here—are germane to the Chambers' respective missions. *See* Eyler Decl. ¶¶ 5, 7–13; O'Hair Decl. ¶¶ 6–8. Both Chambers have a long history of defending the rights of businesses in the courts against laws that compel or restrict speech. *See* Eyler Decl. ¶¶ 8–10, 13; O'Hair Decl. ¶ 8. *Third*, because Plaintiffs bring "constitutional claims" seeking "prospective injunctive relief," this suit does not "require[ ] the participation of the associations' individual members." *Vasquez Perdomo v. Noem*, 148 F.4th 656, 677 (9th Cir. 2025).

## ARGUMENT

### I. Plaintiffs Are Likely To Succeed On Their First Amendment Claim

I-194 bans core political speech; discriminates based on content, viewpoint, and speaker identity; rests on an illegitimate censorship interest the Supreme Court has repeatedly rejected; and is not narrowly tailored. Plaintiffs are likely to succeed on their First Amendment claim.

#### A. I-194 Categorically Bans Plaintiffs' Core Political Speech

The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits laws "abridging the freedom of speech." U.S. Const. amend. I. "[A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Grenning v. Key*, 189 F.4th 886, 894 (9th Cir. 2026) (quoting *Police Dep't of City of Chi. v. Mosley*, 408 U.S. 92, 95 (1972)).

Despite this settled doctrine, I-194 bans all political advocacy by artificial persons. It expressly states that artificial persons do "not possess any legal capacity to expend money or anything of value to support or oppose the outcome of a vote of the electorate," § 4(1), and it prohibits them from exercising any "political spending power" to support or oppose candidates or issues in Montana elections, *ibid.*; *see also* §§ 3(4), 5, 6. As these provisions make clear, I-194 restricts core political speech whose source is a corporation or other artificial entity. It is not a campaign-finance disclosure requirement, reporting obligation, or contribution limit. It is a flat ban on corporate political advocacy. Because Plaintiffs and their members intend to engage in the very advocacy that I-194 defines as "political spending power," it prohibits their planned speech. *See* Eyler Decl. ¶¶ 15–17; O'Hair Decl. ¶¶ 9–15; Brooks Decl. ¶¶ 9–15; Clarno Decl. ¶¶ 9–12; *accord* Christensen Decl. ¶¶ 7–11.

The speech I-194 bans lies at the heart of the First Amendment. "The First Amendment's protection of free speech has its 'fullest and most urgent application precisely to the conduct of campaigns for political office.'" *NRSC v. FEC*, 609 U.S. 908, 917 (2026). Speech about elections, candidates, political parties, and ballot questions "is 'core political speech' for which First Amendment protection is 'at its zenith.'" *See Buckley v. Am. Const. L. Found., Inc.*, 525 U.S. 182, 183 (1999). Moreover, "[b]ecause 'virtually every means of communicating ideas in today's mass society requires the expenditure of money,' 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.'" *NRSC*, 609 U.S. at 912.

The fact that Plaintiffs and their members are corporations does not diminish their constitutional injury. "First Amendment protection extends to corporations." *Citizens United v. FEC*, 558 U.S. 310, 342 (2010) (collecting cases). Corporations are "persons" within the meaning of the Fourteenth Amendment, entitled to protection from state abridgement of speech. *First Nat'l Bank of Bos. v. Bellotti*, 435 U.S. 765, 779–80, 780 n.15 (1978); *see RK Ventures, Inc. v. City of Seattle*, 307 F.3d 1045, 1057 & n.7 (9th Cir. 2002); *Grosjean v. Am. Press Co.*, 297 U.S. 233, 244 (1936). Corporations are also "associations of citizens" joining together to advance shared objectives. *Citizens United*, 558 U.S. at 349–56. Restrictions on corporate political speech therefore burden not only the First Amendment freedoms enjoyed by the corporation itself, but also the rights of the individuals who associate through the corporation for expressive purposes.

### B. I-194 Is Subject To Strict Scrutiny Because It Discriminates Based On Content, Speaker, And Viewpoint

I-194 is content-based, aimed at disfavored speakers, and viewpoint-discriminatory. Content-based speech laws "are 'presumptively unconstitutional'" and subject to "strict scrutiny." *Chiles v. Salazar*, 607 U.S. 627, 640 (2026). Laws

that target "disfavored speakers" are likewise subject to strict scrutiny. *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 565 (2011). "Discrimination based on viewpoint is 'an egregious form of content discrimination.'" *Imperial*, 170 F.4th at 843. It is a "bedrock First Amendment principle that the government cannot discriminate based on viewpoint." *Chiles*, 607 U.S. at 641 (cleaned up).

I-194 is facially content based. It permits corporations to speak for so-called "lawful business, charitable, cooperative, or organizational purposes," while expressly prohibiting "political spending power." § 3(2). It specifically prohibits expenditures that "support or oppose" "candidate[s]," "political part[ies]," "political committee[s]," "referend[a]," "constitutional amendment[s]," and all other "initiative[s]," but not expenditures concerning other subjects. § 3(4)(a). Thus, I-194 "applies to particular speech because of the topic discussed or the idea or message expressed." *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015); *see also Victory Processing, LLC v. Fox*, 937 F.3d 1218, 1226 (9th Cir. 2019) (applying strict scrutiny to content-based Montana law that "explicitly targets … political speech").

The statute also "disfavor[s] specific speakers." *Sorrell*, 564 U.S. at 564. It strips "artificial person[s]" of any "political spending power," but it "leave[s] wholly undisturbed the constitutional rights of natural persons." § 2(6)(e); *see also* § 5(4)(a). I-194 also exempts from its prohibitions "political committees organized

under Montana law or federal law," § 5(5), and media corporations, § 3(4)(b). Thus, although I-194 would prohibit Plaintiffs and their members from expressing their opinions about candidates and issues, it would permit a news corporation to publish the same views. "[T]he First Amendment generally prohibits the suppression of political speech based on the speaker's identity." *Citizens United*, 558 U.S. at 350. I-194's "target[ing]" of specific "speakers and their messages for disfavored treatment" compounds its content-based burden. *See Sorrell*, 564 U.S. at 564–65.

I-194 is viewpoint discriminatory as well. As its history confirms, I-194's proponents sought not merely to restrict corporate political advocacy, but to suppress speech they regarded as contrary to the public good. *See, e.g.*, I-194 Explained, *supra*; SOS Voter Pamphlet 24, 27, *supra*. They identified specific topics, such as healthcare and tax policy, on which they believe corporations took the wrong view, and even singled out Plaintiff "the Chamber of Commerce" for its position on taxes. *See* I-194 Explained, *supra*.

The statute operates accordingly: It silences the corporate speakers whose political views its proponents criticized while leaving other speakers free to advocate contrary views. The alignment between I-194's operation and its stated purpose confirms that the law is viewpoint discriminatory. *See Sorrell*, 564 U.S. at 565, 571 (explaining "purpose" and "practical operation" of state statute showed that its speaker-based restriction was "viewpoint discriminatory").

I-194's content-, speaker-, and viewpoint-based distinctions trigger strict scrutiny.

### C. Montana Has Not Met Its Burden To Establish A Compelling Interest

Because I-194 is subject to strict scrutiny, Montana must prove that it "promote[s] a compelling interest" and uses "the 'least restrictive means to further the articulated interest.'" *NRSC*, 609 U.S. at 920. Montana must satisfy that burden by reference to interests it actually pursued, not those "hypothesized or invented post hoc in response to litigation." *Id.* at 921; *see also Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 543 n.8 (2022).

Montana cannot satisfy its burden. I-194, on its face, evinces an unmistakable preference for the speech of "natural persons" over "artificial persons," § 2(6)(b), (e), on the theory that speech by the latter "compromise[s] the integrity of the people's political process," § 2(4). I-194's proponents explained why: they believed that speech by artificial persons was "flood[ing]" into elections and "distort[ing]" the marketplace of ideas. SOS Voter Pamphlet 27, *supra*. I-194, they claimed, would restore balance by "ensur[ing] the voices of Montana voters don't get drowned out by corporate" speech. I-194 Explained, *supra*.

The Supreme Court has squarely rejected this "antidistortion rationale." *Citizens United*, 558 U.S. at 349. "The 'concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of

others is wholly foreign to the First Amendment.'" *NRSC*, 609 U.S. at 921. Such a rationale would permit government "to arrogate the voters' authority to evaluate the strengths" of competing arguments. *Davis v. FEC*, 554 U.S. 724, 742 (2008). The First Amendment instead "secure[s] 'the widest possible dissemination of information from diverse and antagonistic sources,'" *Buckley v. Valeo*, 424 U.S. 1, 49 (1976), including "corporation[s]," "association[s]," "union[s]," and "individual[s]," *Citizens United*, 558 U.S. at 349. As *Bellotti* explained, "[t]he people," not the government, bear "the responsibility for judging and evaluating the relative merits of conflicting arguments." 435 U.S. at 791. I-194 therefore begins from a premise the Supreme Court has already condemned: that the State may suppress political speech because it believes some voices have become too influential.

I-194 seeks to evade settled doctrine through semantics. The statute purports not to restrict speech but instead to "redefine" "the general grants of powers to artificial persons." § 2(4). But in *Bellotti*, the Supreme Court rejected the "extreme position" that "the States are free to define the rights of their creatures without constitutional limit." 435 U.S. at 778 n.14. And though the dissents embraced the same distinction between corporate powers and constitutional rights that underlies I-194, *see id.* at 826 n.6 (Rehnquist, J., dissenting), 816 n.13 (White, J., dissenting), the majority rejected such "semantic reasoning," under which the protection afforded

corporate speech "would differ depending on whether the source of the alleged abridgment was a State or the Federal Government," *id.* at 780 n.16. *Citizens United* likewise explained that "First Amendment protection extends to corporations," and "rejected the argument that political speech of corporations or other associations should be treated differently under the First Amendment simply because such associations are not 'natural persons.'" 558 U.S. at 342–43. And when Montana previously urged the Supreme Court to disregard *Citizens United* and permit restrictions on corporate political expenditures, the Court summarily reversed. *See Am. Tradition P'ship*, 567 U.S. at 516–17. The First Amendment does not permit States to suppress political advocacy by redefining the powers of corporations.

Indeed, Montana's theory fails on its own terms. The State may define *within constitutional limits* the powers of entities it creates, but one of those limits is that First Amendment protections do not disappear when individuals join together through corporations and other associations. *Citizens United*, 558 U.S. at 349, 354, 356; *see also Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 606 (2021) (effective advocacy is enhanced by group association); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958) (same). As the Court recently explained, speakers do not "shed their First Amendment protections by employing the corporate form to disseminate their speech." *303 Creative LLC v. Elenis*, 600 U.S. 570, 594 (2023). "A corporation," after all, "is simply a form of organization used by human

beings to achieve desired ends." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 706 (2014). It is merely a means to manage "men's affairs." *FTC v. Am. Tobacco Co.*, 264 U.S. 298, 305–06 (1924). As Justice Holmes explained over a century ago, "[t]he mere facts of carrying on a commerce not confined within State lines and of being organized as a corporation do not" "sweep all our traditions into the fire." *Ibid.* The State is therefore wrong to assume that corporate rights may be divorced from the rights of the individuals who associate through the corporation.

I-194's incoherence is even more stark as applied to foreign corporations, which Montana neither creates nor endows with corporate powers. §§ 3(1), 5(2). "No principle of corporation law and practice is more firmly established," *CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 89 (1987), than that "which recognizes that only one State should have the authority to regulate a corporation's internal affairs," *Edgar v. MITE Corp.*, 457 U.S. 624, 645 (1982). Yet I-194 purports to apply to entities that are "organized or existing under the laws of another jurisdiction" so long as they transact business or hold property in Montana. § 3(1). A foreign entity that speaks is "conclusively considered to be transacting business" in Montana, its expenditures are "void from the beginning," and it must disgorge them and forfeit its Montana-conferred authority to transact business. §§ 3(1), 3(3), 6(2)(a), 7(4)(a). If I-194 truly operated only by defining the powers of entities Montana creates, there would be no basis for applying it to foreign corporations. Nor may Montana justify

such restrictions based on concerns about the influence of nonresidents. *See Thompson v. Hebdon*, 7 F.4th 811, 825–26 (9th Cir. 2021) (rejecting Alaska's "self-governance" rationale as "a re-branding of the interest of combating influence and access that the Supreme Court has squarely rejected"). I-194's extension to non-Montana entities thus confirms what its operative language already reveals: I-194 is an unconstitutional restriction on political speech, not a permissible exercise in corporate housekeeping.

### D. I-194 Is Not Tailored To Any Legitimate State Interest

Even if Montana had asserted a compelling governmental interest for I-194, it would fail strict scrutiny because it is radically untailored to any conceivable such interest. Because I-194 burdens core political speech, Montana must prove I-194 is "the least restrictive means to further the articulated interest." *NRSC*, 609 U.S. at 920 (cleaned up); *see Chiles*, 607 U.S. at 640.

To start, I-194 is a radically overinclusive ban on corporate political spending. It is not a campaign-finance disclosure requirement or a contribution limit. Instead, it altogether forbids corporations from engaging in election and ballot-question advocacy. *See* section I.A., *supra*. Montana's choice of a complete prohibition, rather than any of the numerous less restrictive tools traditionally used in the campaign-finance context, is an obvious tailoring flaw.

Assuming *arguendo* that Montana had a compelling governmental interest in defining the powers of entities it creates notwithstanding constitutional limits, *but see* section I.C., *supra*, I-194 would remain significantly overinclusive. Restricting the speech of *foreign* corporations does not further Montana's asserted interest in defining the rights of Montana-chartered entities. If anything, respect for the principle that state law generally defines corporate powers counsels *against* restricting the powers of non-Montana entities.

I-194 is also underinclusive because favored media corporations remain free to engage in political advocacy. I-194 broadly prohibits corporations from "support[ing] or oppos[ing]" election and ballot-question advocacy, § 3(4)(a), yet it simultaneously exempts "bona fide news" organizations from that prohibition, § 3(4)(b). If corporate political advocacy is genuinely so harmful that Montana may prohibit it, there is no apparent reason why newspaper corporations, broadcasting companies, online publications, and other media corporations may continue engaging in the very same advocacy. The Supreme Court identified a similar flaw in *Citizens United*, observing that Congress could not plausibly justify a sweeping restriction on corporate political speech while simultaneously exempting media corporations from that restriction. *See* 558 U.S. at 352–54. Such underinclusiveness "raises serious doubts about whether the government is in fact pursuing the interest it invokes." *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 802 (2011); *accord NRSC*,

609 U.S. at 931 n.5. I-194's favored treatment of media corporations therefore confirms that the statute bears little relationship to the interest it purports to serve.

## II. Plaintiffs Are Likely To Succeed On Their Unconstitutional-Conditions Claim

Plaintiffs are likely to succeed for a second, independent reason: I-194 is a textbook unconstitutional condition. Montana "may not deny a benefit to a person on a basis that infringes his constitutionally protected freedom of speech even if he has no entitlement to that benefit." *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 214 (2013) (cleaned up); *Perry v. Sindermann*, 408 U.S. 593, 597 (1972); *see Carson v. Makin*, 596 U.S. 767, 778 (2022). Yet I-194 conditions valuable state-conferred benefits on the surrender of First Amendment rights.

I-194 expressly adopts a conditions-based framework. It provides that corporate existence and authority to do business are "a conditional grant[ ] of legal status" that is "subject to … withdraw[al]" by Montana. § 2(2). I-194 then states that "[t]he absence of political spending power under [I-194] is a condition of state-conferred legal status and charter privileges." § 4(2). A corporation that engages in political advocacy "forfeit[s] all charter privileges as a matter of law [and] … without limitation." § 7(1)–(2). Once lost, a corporation may only restore its privileges by certifying that it will no longer engage in election and ballot-question advocacy. § 7(4)(b). I-194 thus presents corporations with precisely the choice the

unconstitutional-conditions doctrine forbids: surrender First Amendment rights or forfeit valuable governmental benefits.

The Supreme Court has squarely rejected the notion that a State may condition the benefits of the corporate form on the surrender of First Amendment freedoms. Although incorporation provides certain advantages, "[i]t is rudimentary that the State cannot exact as the price of those special advantages the forfeiture of First Amendment rights." *Citizens United*, 558 U.S. at 351; *cf. Healy v. James*, 408 U.S. 169, 176–77 (1972) (holding "official recognition" by government was a protected benefit). The unconstitutional-conditions doctrine forecloses the bargain I-194 seeks to impose.

More broadly, the Supreme Court has repeatedly rejected efforts by States to condition an organization's ability to operate on the surrender of constitutional rights. In *Terral v. Burke Construction Co.*, 257 U.S. 529 (1922), the Court expressly held that "a state may not, in imposing conditions upon the privilege of a foreign corporation's doing business in the state, exact from it a waiver of the exercise of its constitutional right … or thereafter withdraw the privilege of doing business because of its exercise of such right." *Id.* at 532. In *NAACP v. Alabama*, and again in *Americans for Prosperity Foundation*, the Court applied that principle to First Amendment rights, invalidating Alabama's and then California's attempts to require organizations to disclose sensitive member and donor information as a condition of

operating in the State. *See* 357 U.S. at 451–53; 594 U.S. at 618. The Court recently observed that "banning [an] organization from the State" presents the First Amendment problem "in its starkest form." *First Choice Women's Res. Centers, Inc. v. Davenport*, 608 U.S. 174, 185 (2026). Montana employs the same unconstitutional device.

The consequences for corporations are substantial. Plaintiffs and their members intend to engage in protected political speech during the 2027-2028 election cycle in order to support pro-business candidates and policies. *See* Background, *supra*. I-194 classifies such advocacy as "political spending power," subject to significant consequences up to and including dissolution. The statute therefore presents Plaintiffs and their members with an immediate choice: refrain from protected political advocacy or risk the loss of valuable legal benefits, among other sanctions. The unconstitutional-conditions doctrine precludes Montana from imposing that choice.

## III. Plaintiffs Are Likely To Succeed On Their Overbreadth Claim

I-194 is unconstitutionally overbroad. In the First Amendment context, "a law may be invalidated as overbroad if a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *Ams. for Prosperity Found.*, 594 U.S. at 615.

The first step is to "determine what the law covers." *Moody v. NetChoice, LLC*, 603 U.S. 707, 725 (2024) (cleaned up). Here, that is straightforward. I-194 categorically prohibits all "artificial person[s]" from expending "money or anything of value" in connection with an election or ballot question. §§ 3(4), 4.

The next step "is to decide which of the laws' applications violate the First Amendment, and to measure them against the rest." *Moody*, 603 U.S. at 725. That inquiry is unusually straightforward here because I-194 does not regulate different covered speakers or activities differently. It imposes the same across-the-board prohibition on all political advocacy by every covered entity. The question is therefore not whether some applications raise constitutional concerns while others do not, but whether the categories of speech I-194 prohibits are constitutionally protected. Because I-194 "raise[s] the same First Amendment issues in every application," the Court "do[es] not need a dense factual record to know how these settings will play out in the real world." *NetChoice, LLC v. Bonta*, 152 F.4th 1002, 1022 (9th Cir. 2025) (facially invalidating content-based speech restriction) (cleaned up). The violation is "categorical" and "present in every case." *Ams. for Prosperity Found.*, 594 U.S. at 615 (facially invalidating donor-disclosure requirement); *NetChoice, LLC v. Bonta*, 113 F.4th 1101, 1116 (9th Cir. 2024) (facially invalidating compelled reporting requirement where all "covered businesses" were "under the same statutory obligation").

The prohibition on advocacy related to ballot questions, § 3(4)(a)(ii), is unconstitutional in every application. In *Bellotti*, the Supreme Court facially invalidated a Massachusetts law prohibiting corporations from making expenditures to influence ballot questions unless the measure materially affected the corporation's property, business, or assets. 435 U.S. at 767–68. I-194 goes further still, prohibiting all such advocacy by artificial persons regardless of the subject matter. If the statute invalidated in *Bellotti* violated the First Amendment, then I-194, which prohibits an even broader category of initiative advocacy, necessarily does as well. *Accord Mont. Chamber of Com.*, 226 F.3d at 1057–58 (affirming injunction against Montana initiative that "restrict[ed] public discussion in the ballot issue … process").

The prohibition on election-related advocacy is likewise unconstitutional in all or nearly all applications. After *Citizens United*, it is beyond dispute that artificial persons have a First Amendment right to make independent expenditures supporting or opposing candidates, parties, or committees. *See* 558 U.S. at 365 (finding "no basis for allowing the Government to limit corporate independent expenditures"); *see also Long Beach Area Chamber of Com. v. City of Long Beach*, 603 F.3d 684, 695–99 (9th Cir. 2010) (similar). The statute *Citizens United* held unlawful prohibited independent expenditures in federal elections for communications that "expressly advocate the election or defeat of a candidate," as well as independent expenditures for so-called "electioneering communications," a statutory term

defined as those that refer to "a clearly identified candidate" within a specified number of days before an election. 558 U.S. at 320–21. I-194 prohibits even more protected speech. Whereas the federal restrictions invalidated in *Citizens United* were limited to express advocacy and electioneering communications during defined pre-election periods, I-194's definition of "political spending power" reaches all independent expenditures supporting or opposing candidates, political parties, and political committees, without regard to timing or whether they contain express advocacy. § 3(4). I-194 therefore reaches substantially more speech than the statute held unconstitutional in *Citizens United*.

At most, I-194 may have a limited constitutional application with respect to direct candidate contributions potentially governed by *FEC v. Beaumont*, 539 U.S. 146 (2003). Courts have repeatedly recognized *Beaumont*'s tension with *Citizens United*. *See, e.g.*, *Minn. Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 879 n.12 (8th Cir. 2012) (en banc) ("*Citizens United* … casts doubt on *Beaumont*, leaving its precedential value on shaky ground" (cleaned up)). But the Court need not resolve that tension. Even assuming *Beaumont* remains good law, I-194 still prohibits a vast quantity of undeniably protected speech. The unconstitutional applications therefore do not merely exceed the statute's legitimate sweep. They overwhelmingly predominate. I-194 is therefore substantially overbroad and facially unconstitutional.

## IV. The Remaining Factors Favor Injunctive Relief

### A. Irreparable Harm

Plaintiffs and their members face an imminent self-censorship harm. *See supra* Standing. Namely, they regularly expend funds and other resources to support or oppose Montana candidates, parties, committees, and ballot questions that affect them and their stakeholders, and they plan to continue doing so in the future. Eyler Decl. ¶¶ 14–16; O'Hair Decl. ¶¶ 9–14; Brooks Decl. ¶¶ 9–14; Clarno Decl. ¶¶ 9–11; Christensen Decl. ¶¶ 7–10. But I-194 imminently threatens to penalize that advocacy—including advocacy planned for early 2027. Thus, absent an injunction blocking I-194's enforcement before January 1, Plaintiffs and their members must imminently forgo protected political advocacy. Eyler Decl. ¶¶ 16, 18; O'Hair Decl. ¶¶ 15, 17–18; Brooks Decl. ¶¶ 15, 17–18; Clarno Decl. ¶¶ 12–15, 17–18; Christensen Decl. ¶¶ 11–14. That is a textbook First Amendment injury. *Imperial*, 170 F.4th at 834–35.

So too the chilling effect that is already occurring. Plaintiffs and their members are already planning their advocacy efforts for the next election cycle. Eyler Decl. ¶ 17; O'Hair Decl. ¶ 16; Brooks Decl. ¶ 16; Clarno Decl. ¶ 16; Christensen Decl. ¶ 15. Those efforts are important, as political advocacy must be planned, created, and paid for, all before it is ultimately disseminated. *See ibid.*; *accord Buckley v. Valeo*, 424 U.S. at 19 ("Speeches and rallies generally necessitate

hiring a hall and publicizing the event"; "The distribution of the humblest handbill or leaflet entails printing, paper, and circulation costs"). The chill of I-194's censorship is thus already undermining Plaintiffs' and their members' expression by preventing them from effectively planning speech—right at the precise time that they are finalizing plans and budgets for the upcoming year. *See* Eyler Decl. ¶ 17; O'Hair Decl. ¶ 16; Brooks Decl. ¶ 16; Clarno Decl. ¶ 16; Christensen Decl. ¶ 15; *accord Citizens United*, 558 U.S. at 336 ("Laws enacted to control or suppress speech may operate at different points in the speech process").

These injuries are irreparable. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Mahmoud v. Taylor*, 606 U.S. 522, 569 (2025) (alterations rejected). Irreparable harm is readily established where a plaintiff demonstrates a likely First Amendment violation. *See Hubbard v. City of San Diego*, 139 F.4th 843, 853 (9th Cir. 2025); *X Corp. v. Bonta*, 116 F.4th 888, 904 (9th Cir. 2024). Indeed, "the harm is particularly irreparable where, as here, a plaintiff seeks to engage in political speech, as timing is of the essence in politics and a delay of even a day or two may be intolerable." *Klein v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009) (cleaned up).

Plaintiffs thus require preliminary relief by January 1. If Plaintiffs and their members are forced to wait until the resolution of this lawsuit to begin speaking to support or oppose candidates, parties, committees, and ballot questions, it will

already be too late. They will have been deprived of their opportunity to exercise their First Amendment rights.

### B. Balance of Harms and the Public Interest

The balance of equities and public interest point in the same direction. *See Nw. Ass'n Indep. Schs.*, 166 F.4th at 1156 (equitable factors "merge" when government is a party). Montana has no legitimate interest in suppressing constitutionally protected political speech. *See Hubbard*, 139 F.4th at 853; *Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023) (explaining that a State is not "harmed in any legally cognizable sense by being enjoined from constitutional violations"). By contrast, denying relief would prevent Plaintiffs and their members from engaging in protected political expression. Thus, "the balance of equities favors Plaintiffs, whose First Amendment rights are being chilled." *Imperial*, 170 F.4th at 876 (cleaned up). Further, the public has a substantial interest in receiving competing views about candidates, elections, and matters of public policy. *See Bellotti*, 435 U.S. at 783–84; *Citizens United*, 558 U.S. at 349. Enjoining I-194 will preserve, rather than disrupt, the free exchange of political ideas that the First Amendment exists to protect. *Accord Imperial*, 170 F.4th at 876 ("it is always in the public interest to prevent the violation of a party's constitutional rights").

Because Plaintiffs are likely to succeed on the merits, face irreparable injury absent relief, and have established that the balance of equities and public interest favor an injunction, the Court should preliminarily enjoin enforcement of I-194.

## V. Alternatively, The Court Should Grant Permanent Relief.

The Court may resolve the merits now pursuant to Federal Rule of Civil Procedure 65(a)(2). That route is appropriate here because "[t]he issues raised" are purely "legal." *Slidewaters LLC v. Wash. State Dep't of Lab. & Indus.*, 4 F.4th 747, 759 (9th Cir. 2021) (affirming "district court's consolidation under Rule 65(a)(2)" on expedited timeline); *Donald J. Trump for President, Inc. v. Bullock*, 491 F. Supp. 3d 814, 823 (D. Mont. 2020) (consolidating motions for preliminary injunction with trial on the merits). And if the Court consolidates the proceedings and resolves the merits in Plaintiffs' favor, permanent relief is warranted for the same reasons discussed above: enforcement of I-194 would inflict irreparable First Amendment injury, legal remedies are inadequate to redress lost political speech, and the balance of hardships and public interest favor preventing enforcement of an unconstitutional law. *See No Labels Party of Arizona v. Fontes*, 142 F.4th 1226, 1231 (9th Cir. 2025); *Donald J. Trump for President*, 491 F. Supp. 3d at 824 ("the standard for a preliminary injunction is essentially the same as for a permanent injunction" (cleaned up)).

Because further factual development is not needed to decide the purely legal questions in this case, Plaintiffs respectfully request that the Court enter final judgment declaring I-194 unlawful and permanently enjoining its enforcement before the law takes effect on January 1, 2027. However, because Plaintiffs seek relief from the imminent and irreparable harm that I-194 will cause if it takes effect on January 1, Plaintiffs respectfully request that the Court forgo this option if proceeding under Rule 65(a)(2) would delay relief beyond that date.

## CONCLUSION

The Court should grant the Motion and enjoin I-194 before its January 1, 2027 effective date.

DATED: November 12, 2026.

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**CERTIFICATE OF COMPLIANCE**

Pursuant to L.R. 7.1(d)(2)(E), I certify that this Memorandum contains 6,496 words, excluding the caption, certificate of compliance, table of contents and authorities, exhibit index, and certificate of service, as calculated by the word-count function of Microsoft Word.

DATED: November 12, 2026.

/s/ Dale Schowengerdt
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