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Memorandum

To: Transparent Election Initiative
From: Cochenour Law Office, PLLC
Date: October 19, 2026
Re: Response to Tennenbaum Law Group memo to Montana Nonprofit Association (MNA) re: I-194

I. Issue Presented

The memo provided to the MNA by the Tennenbaum Law Group critiqued I-194 (also referred to as The Montana Plan) and concluded that I-194 would create uncertainty in Montana law. The memo is likely correct that I-194 will face legal challenges. But several of its criticisms appear exaggerated because it reads individual phrases apart from the initiative's limiting language and overall structure or fails to harmonize I-194 with existing statutes. The result is that a reader of the MNA memo may be left with an inaccurate and incomplete understanding of I-194.

This memo responds to the primary criticisms of The Montana Plan, including concerns about ambiguities in I-194, the "anything of value" standard, and impacts on the ability of nonprofits to engage in voter education and nonpartisan activity. This response does not attempt to address all the points of disagreement with the MNA memo, nor does it constitute legal advice. Rather, this memo offers a brief response to the main points raised in the MNA memo's analysis.

II. Statutory Interpretation Standards

Many of the concerns identified in the MNA memo focus on I-194's language. If enacted, I-194 will be codified in Title 35 of the Montana Code Annotated. When faced with questions of statutory interpretation, Montana courts apply well-established standards to discern meaning. Courts begin with the plain statutory language and when that language is clear and unambiguous, no further interpretation is needed. *Montana Sports Shooting Ass'n v. State*, 2008 MT 190, ¶ 11, 344 Mont. 1, 185 P.3d 1003. Courts interpret statutes as a whole and within their relevant context. Statutory interpretation is a

"holistic endeavor" and when there are several statutes relating to the same subject matter, the courts will harmonize those statutes to give them all meaning. *Id*. The role of the court is simply to ascertain what the statute says by its terms or substance, and courts will not add language to a statute, nor ignore the statute's express language. Section 1-2-101, MCA (courts are "not to insert what has been omitted or to omit what has been inserted."). Applying these statutory standards to I-194 resolves many of the concerns raised in the MNA memo.

III. Statutory Ambiguities and Conflicts

The MNA memo identifies several purported ambiguities. First, it states that the ballot statement language creates confusion by describing "artificial persons" differently than the text of I-194 itself. While it is correct that the language is different, there is no cause for confusion. The language the MNA memo finds problematic was added to the ballot statement by the Montana Attorney General to inform voters about the types of entities within I-194's scope. If anything, the language provides clarity, not confusion.

The MNA memo contends that I-194's inclusion of out-of-state entities within the definition of artificial person appears to conflict with existing statutes identifying activities that do not constitute "transacting business" within the state. Existing law provides that activities such as maintaining proceedings, holding internal meetings, having bank accounts, and other conduct are not considered "transacting business" for purposes of out-of-state entities' certificate of authority. Section 35-2-820, MCA.

While the existing statutes address whether a foreign nonprofit must obtain a certificate of authority, I-194 addresses whether an entity has authority to engage in political spending. Under I-194, a foreign artificial person is transacting business in the state "for purposes of this Act" if it exercises political spending power in Montana. These provisions can operate together, and I-194 does not upset the provisions of § 35-2-820, MCA. As an example, if a foreign entity held a board meeting and directed the exercise of political spending within Montana, the board meeting itself would remain exempt from the certificate-of-authority provision, but the direction of political spending would constitute "transacting business" and bring the organization within I-194 for the Act's limited purposes. These are statutory distinctions, not conflicts. Under Montana statutory interpretation principles favoring harmonization, the more persuasive reading of these provisions is that the existing qualification statute continues to govern certificates of authority while I-194's specific definition governs the meaning of "transacting business" in relation to political spending. Notably, Montana law already forecloses a

foreign corporation from engaging in any business or exercising any powers beyond those authorized for Montana corporations. Section 35-14-1501, MCA.

The MNA memo also contends that Section 4 of I-194 creates ambiguity and confusion by first invoking the term "political spending power" and then referring to expenditures supporting or opposing the "outcome of a vote of the electorate." There is a difference in wording, but it does not create "different and overlapping sets of prohibited activity" as suggested. Rather, Section 4 first expressly states the governing rule that, except for political committees, Montana does not extend "political spending power" to artificial persons and then describes the resulting absence of legal capacity. That does not create an ambiguity. Read as a whole and in harmony with Section 2's stated purpose, the more natural reading of Section 4 is that it restates the effect of the defined powers that Montana extends to artificial persons rather than creates overlapping and inconsistent prohibitions.

IV. Concerns about the Scope of I-194

The MNA memo also expresses concerns about I-194's scope as applied to nonprofits, stating that it is unclear whether organizations would be able to engage in activities like voter education, registration drives, and candidate forums. The MNA memo also says that the term "anything of value" has no definition that would provide guidance to nonprofits, and the memo states that I-194 would likely be preempted by federal law if it were to apply to federal elections. These concerns are overstated.

First, "political spending power" does not encompass voter education, candidate forums, lobbying, or similar activities. Although The Montana Plan will be in Title 35 as part of corporate law, the fact that it concerns "political spending power" means that it borrows a lot of terminology from the campaign finance law that is present in Title 13. I-194 deliberately uses established campaign finance terminology, including terms such as "candidate," "contribution," "expenditure," "political committee," "election," "support or oppose," and "anything of value." These terms are all defined in existing Montana law. *See* § 13-1-101, MCA.

As discussed above, when courts interpret statutory language, they look to the plain language, ordinary meaning, and the context of a provision. In the context of a corporate provision concerning an artificial person's capacity to exercise "political spending power," a court would consider the ordinary meaning of words and phrases used in the context of political spending. And there is no need to guess about meaning in this context because the ordinary meaning of these phrases is expressly set out in Title 13. In other words,

courts have an existing natural guide for interpreting the campaign finance terms appearing in I-194.

Applying the ordinary meaning of these terms, artificial persons do not have the authority to spend money or anything of value to engage in express advocacy or its functional equivalent for or against a candidate, ballot issue, or political committee in an election or on a question formally certified or submitted to voters. So, a nonprofit has no power to spend money on a mailer that says "Vote for candidate X," but it can still spend money on voter education, outreach, and other types of spending to communicate with voters. And while the MNA memo claims that there is no guidance for nonprofits on the meaning of "anything of value," that term is defined in Title 13 and nonprofits have been reporting their "anything of value" contributions and expenditures for years.

The MNA memo next claims that it is unclear whether I-194 would apply to federal elections and predicts that, if it does, it would be preempted by federal law. This misunderstands what I-194 is. I-194 is *not* a campaign finance regulation or restriction that imposes limitations or caps on something that an artificial person is otherwise authorized to do, such as engage in political spending in state (or federal) elections. It is a grant of power to artificial entities and that grant expressly does not include political spending power. This does not conflict with the Federal Election Campaign Act of 1971 (FECA) for the simple reason that FECA has nothing to say about the powers that a state grants to artificial persons. The powers granted to an artificial person are a matter of state law, not federal law. Indeed, that is the main premise underlying The Montana Plan.

V. Conclusion

Read as a whole and harmonized with existing Montana law, I-194 does not create the sweeping ambiguities or statutory conflicts identified in the MNA memo. The Montana Plan's use of established campaign-finance terminology provides a workable framework for distinguishing unauthorized political spending from voter education, candidate forums, registration drives, lobbying, and other nonpartisan activities. Likewise, I-194's treatment of foreign entities can operate alongside existing applicable Montana law without raising conflicts. Although I-194 may generate legal challenges requiring judicial resolution, the MNA memo overstates the initiative's uncertainty by reading the initiative in a manner that is at odds with settled statutory-interpretation principles.