

T E N E N B A U M
L A W G R O U P P L L C

MEMORANDUM

TO: Montana Nonprofit Association

FROM: Tenenbaum Law Group PLLC

DATE: October 15, 2026

RE: **Summary and Analysis of Montana Initiative 194 (I-194)**

This memorandum was prepared by Tenenbaum Law Group PLLC for Montana Nonprofit Association ("MNA") with the intent that it be shared with MNA members as an informational and educational resource. It does not constitute legal advice to any MNA member organization or individual, or to any other organization or individual. If you have any questions about compliance with federal, state, or local law that may apply to your organization or its activities, you should consult experienced legal counsel.

I. Introduction

On November 3, 2026, Montana voters will consider Initiative No. 194 ("I-194"), a ballot referendum known as the "The Montana Plan Act." I-194 would amend Montana law to redefine the powers and privileges of "artificial persons," specifically, to deny them the ability to engage in certain "political spending." Montana Nonprofit Association expects that I-194 would have a profound impact on nonprofit organizations in Montana and has requested this summary and analysis to educate nonprofits on the proposal.

II. Background on I-194

On August 17, 2026, I-194 qualified for the general election ballot in Montana. It is promoted by the Transparent Election Initiative ("TEI") as a "breakthrough legal strategy" to "beat *Citizens United* and take back our politics."¹ *Citizens United* is a reference to *Citizens United v. FEC*,² a landmark 2010 court ruling by the U.S. Supreme Court that struck down on First Amendment grounds a provision in federal campaign finance law prohibiting electioneering communications paid for by corporations, labor unions, and other organizations. *Citizens United* remains a controversial ruling, and it has served as the basis for reducing barriers to corporate participation in electoral politics and as a source of popular backlash against the same.

For nearly 100 years, Montana law had prohibited corporations from making independent expenditures in connection with Montana elections. Montana's Corrupt Practices Act of

¹ Transparent Election Initiative, <http://www.transparentelection.org> (accessed Oct. 14, 2026).

² *Citizens United v. Federal Election Comm'n*, 558 U.S. 310 (2010).

1912, enacted by ballot initiative, contained such a prohibition.³ Following the *Citizens United* ruling in 2010, the U.S. Supreme Court found Montana’s prohibition unconstitutional under *Citizens United*.⁴

Montana has previous history of ballot initiatives intending to reverse *Citizens United*. In November 2012, Montana voters overwhelmingly approved Initiative 166, the Prohibition on Corporate Contributions and Expenditures in Montana Elections Act,⁵ which established an official state policy declaring that corporations are not human beings and are not entitled to constitutional rights under state law. It further directed elected and appointed officials to act to prohibit, wherever possible, corporations from making contributions to or expenditures on the campaigns of candidates or ballot issues.⁶ Finally, it directed Montana’s congressional delegation with proposing a joint resolution to amend the U.S. Constitution to overturn *Citizens United* and prohibit campaign contributions or expenditures by corporations.⁷ In 2013, a lower state court in Montana subsequently invalidated the direction to Montana’s congressional delegation, but left most of the initiative’s text intact as inoperative policy language.⁸ That order was not appealed.

TEI simultaneously proposed an amendment to the Montana Constitution to limit the rights of “artificial persons,” although the initiative did not qualify for the general election ballot.

I-194 closely resembles Hawai’i S.B. No. 2471, which passed the Hawai’i legislature on May 14, 2026, and was signed into law by the governor as Act 11 the same day. Act 11 is due to take effect on July 2, 2027. Two lawsuits have been filed in federal court in Hawai’i challenging Act 11 on constitutional grounds – one by a Hawai’i 501(c)(3) nonprofit organization and another by the 501(c)(6) U.S. Chamber of Commerce.⁹ Each lawsuit seeks a preliminary injunction to prevent Act 11 from being enforced. The lawsuits claim that Act 11 violates First Amendment speech and assembly rights which *Citizens United* and its precedents explicitly protect. Act 11 has garnered support (including amicus briefs) from various groups favoring democracy and campaign finance reforms, such as Citizens for Responsibility and Ethics in Washington (“CREW”) and Campaign Legal Center. Bringing the lawsuit on behalf of Hawaii Grassroots Institute is the Institute for Free Speech, an organization dedicated to promoting First Amendment rights and a frequent opponent of

³ Mont. Code Ann. § 13-25-227 (2011).

⁴ *Am. Tradition P’ship, Inc. v. Bullock*, 567 U.S. 516 (2012).

⁵ Mont. Code Ann. § 13-35-501 *et seq.* (2025).

⁶ Mont. Code Ann. § 13-35-503(1) (2025).

⁷ Mont. Code Ann. §§ 13-35-504(a)-(c) (2025).

⁸ *Rickert v. McCulloch*, No. CDV-2012-1003 (Mont. 1st D.C., 2013).

⁹ Compl., *Grassroots Inst. of Hawaii v. Lopez*, No. 1:26-cv-00279, (D. Haw. June 5, 2026); Compl., *Chamber of Commerce of the U.S. v. Lopez*, No. 1:26-cv-00497 (D. Haw. Sept. 24, 2026).

campaign finance regulations. The Chamber of Commerce of Hawaii declined to participate in the litigation.

III. Detailed Summary

The provisions of I-194 are intended to be codified as a new chapter in Title 35 of the Montana Code, which addresses the formation and governance of corporations, partnerships, and associations. If approved by the electorate, the new provisions will be effective January 1, 2027.

The following is a detailed, section-by-section summary of the provisions of I-194:

Ballot Language. This is a general summary of the I-194 text which will be printed on the ballot that voters will see for the 2026 election. Its language is a simplified version of the proposed statute text, and its over-simplification creates confusion as to the scope of I-194's coverage. For example, the summary describes "artificial persons" using language different from the text of the initiative, which the summary describes as including "non-profits, trusts, partnerships, corporations, trade associations, or unincorporated associations." The term "artificial person" in the proposed statute does not specifically name these kinds of organizations but rather covers certain legal entity types that may include these organizations.

Section 1. Short title. This brief section states that the proposed statute sections, if enacted, may be referred to as "The Montana Plan Act."

Section 2. Findings and purpose. This section includes the "findings" of the initiative – that is, inoperative and non-binding statements about the intent of the initiative. It makes several conclusive statements that, while persuasive, have limited legal force and effect because they do not contain definitions, requirements, or other operative legislative language that would impact corporations. However, the findings and purposes of legislation are instructive in understanding its intent and are often the focus of legal challenges. Among the findings are that the privileges granted to artificial persons "are not natural rights"; that they are subject to the state's authority to define and limit those rights and privileges; and that limits must be imposed on artificial persons so that they do not "compromise the integrity of the people's political process." The findings further state that each artificial person "has accepted its legal status" subject to the state's authority to regulate it, and that "this principle is well established in the law."

Section 3. Definitions. This section includes definitions of the various terms used throughout the proposed statute sections, including the key terms "artificial person" and "political spending power."

“Artificial person” is defined to include any entity existing or granted limited liability under the laws of the state of Montana. It also includes any entity authorized to transact business or otherwise transacting business in Montana. It provides that any out-of-state entity that “directly or indirectly undertakes, finances, or directs the exercise of political spending power in the state of Montana is conclusively considered to be transacting business in this state for the purposes of [I-194].” This definition appears to conflict with existing provisions of Montana law describing specific activities that do not constitute transacting business in Montana.¹⁰

“Political spending power” is defined as:

the legal capacity to pay, contribute, or expend money or anything of value to support or oppose: (i) a candidate, political party, or political committee in an election held in this state; or (ii) any initiative referendum, recall, constitutional amendment, charter amendment, or other question formally certified or submitted to the electors of this state or any political subdivision of this state.

The definition of “political spending power” explicitly excludes “bona fide news, commentary, or editorial content unless the publishing entity is owned or controlled by a political party, a political committee, or a candidate.” However, it does not contain threshold requirements, *de minimis* provisions excluding small expenditures, or other customary exclusions intended to protect traditional freedoms of speech and association.

Section 4. General rule – political spending power not extended. This section is brief but contains the most essential functional language of I-194. It brings together the key defined terms to state that “Montana does not extend political spending power to an artificial person,” and an artificial person “does not possess any legal capacity to expend money or anything of value to support or oppose the outcome of a vote of the electorate.” Importantly, rather than relying on the definition of “political spending power,” from Section 3, the second part of subsection (1) diverges from that definition by restricting spending that supports or opposes “the outcome of a vote of the electorate.” The difference is subtle but important – it seems to create two different and overlapping sets of prohibited activity. This inconsistency in drafting creates ambiguity and is likely to create confusion in the implementation of I-194.

¹⁰ Out-of-state nonprofit corporations “holding meetings of the board of directors or members” in Montana does not constitute “transacting business” within the meaning of existing Montana corporate law, but such a meeting that directs political spending would likely make such out-of-state nonprofit corporation an “artificial person” for purposes of I-194. See Mont. Code Ann. § 35-2-820(2)(b). Although this provision does not “extend political spending power to an artificial person,” but rather implicates the definition of “artificial person,” it is unclear whether Section 9 of I-194 supersedes § 35-2-820 and similar provisions of existing Montana law.

Section 5. Applicability. This section describes its application to artificial persons organized or existing under the laws of Montana, as well as out-of-state entities authorized to transact business in Montana or holding property in the state. It also applies to other kinds of entities that are not customarily registered with the state, but which may benefit from limited liability or some other privilege of a legal entity. This section clarifies that it does not apply to natural persons acting in an individual capacity; the state of Montana or any agency or political subdivision; and public corporations. This section further clarifies that it “does not restrict the lawful activities of political committees organized under Montana law or federal law.

Section 6. Exercise of political spending power beyond the scope of authority -- voidness -- nonratification. This section broadly states that an act by an artificial person exercising political spending power, as prohibited by I-194, is “void”; may not be “ratified, validated, or given effect”; and “creates no enforceable rights, obligations, or defenses.” This section seems intended to prevent any third-party recipients of prohibited political expenditures from enforcing in court any promise to pay. However, the breadth of this section may create unforeseeable consequences for both the payors and recipients of prohibited political spending.

Section 7. Forfeiture of charter privileges -- reinstatement. This section provides for the forfeiture of an artificial person’s “charter” in Montana if it exercises political spending power. Here, “charter” refers to a corporation or other entity’s legal status in the state or authorization to transact business. It specifies that the revocation of the charter includes forfeiting limited liability, as well as other statutory limitations on personal liability conferred by Montana law. It provides for the reinstatement of the artificial person’s charter upon “disgorgement of all money or things of value expended, contributed, or transferred in the exercise of political spending power” and other compliance steps. This section leaves unanswered many questions regarding the effective dates of forfeited liability protections and the application of statutes of limitations that have already run. Importantly, a revoked charter can expose a nonprofit’s officers and directors to individual legal liability for the corporation’s activities, whereas an intact corporation tends to insulate those individuals from personal liability.

Section 8. Administration and enforcement. This section authorizes the Montana Secretary of State to adopt rules and procedures necessary to implement and enforce I-194 and authorizes the Montana Attorney General to bring enforcement actions. The implementation of rules and procedures will be key to understanding organizations’ rights and vulnerabilities under I-194, but they are unlikely to be in place before a January 1, 2027 effective date.

Section 9. Supersession of inconsistent law. This section provides that the new statutory provisions are intended to supersede any other provisions of law that could be construed to provide artificial persons with political spending power.

Section 10. Effect on organizational documents. This section provides that a provision of an organization's governing documents (such as articles of incorporation or bylaws) "purporting to grant or confer political spending power" is void. This language purports to void entire provisions of such documents, regardless of whether those provisions include other permissible powers but not their own severability clauses.

Section 11. Savings clause. This section provides that I-194 does not invalidate contracts and similar instruments and obligations lawfully entered into prior to the effective date.

Section 12. Severability -- nonrevival. This section provides that, if a part of I-194 is determined (for example, by a court) to be invalid, other parts that are severable from the invalid part remain in effect.

Section 13. Codification instruction. This section provides that I-194 is intended to be codified in Title 35 of the Montana Code, which governs corporations, partnerships, and associations.

Section 14. Effective date. This section provides that I-194, if adopted by voters, is effective January 1, 2027.

IV. Legal Challenges to I-194

If I-194 is adopted on November 3, legal challenges are expected, just as Hawai'i Act 11 was promptly challenged in court. Lawsuits are likely to challenge I-194 on First Amendment grounds (applied to the states through the Fourteenth Amendment), claiming that it represents impermissible restrictions on speech and association. The Hawai'i lawsuits also claim that Act 11 is unconstitutionally vague. Further challenges may claim more specifically that applicability to federal elections held in Montana are preempted by federal law. Litigation is likely to take several years, and interim injunctive relief is uncertain. Although TEI claims that I-194 will "beat *Citizens United*," *Citizens United* is still valid legal precedent, and I-194 is likely to be considered under *Citizens United's* existing First Amendment framework.

V. Impact on Montana Nonprofit Organizations and Recommendations

If adopted, I-194 undoubtedly will leave a lasting impact on nonprofit organizations in Montana and many of their customary activities. I-194's provisions would restrict the scope of permissible nonprofit activities; limit fundraising for such activities; shift other activities

into exempt political committees; and impose additional compliance burdens on nonprofits. Its authorizations for rulemaking and enforcement, paired with ambiguities in the statutory text, may create opportunities for extensive government interference in nonprofit activities and opportunistic targeting of organizations with agendas in opposition to state administration policies. Some of those impacts are described below, although it is likely underinclusive of the many possible impacts to the Montana nonprofit sector.

- a. Scope of Nonprofit Political Activities. The broad definition of “political spending power” in I-194 seems clearly to prohibit many customary activities for associations and nonprofits in Montana, including independent expenditure campaigns conducted directly by 501(c)(4) and 501(c)(6) organizations to support or oppose candidates for public office. Previously, under *Citizens United* and *American Tradition Partnership*, such activity was permissible. I-194 still permits such activity to be accomplished through a federal or Montana political committee.

It remains unclear whether “political spending power” includes other common nonprofit activities such as voter education, registration, candidate forums, and similar nonpartisan activity conducted by 501(c)(3) organizations. On one hand, I-194 could be interpreted to restrict such activities because they “support,” in a general sense rather than with respect to a position, a ballot initiative. On the other hand, such activities could be interpreted to be outside the scope of I-194 because they do not “support or oppose” in the sense that they do not promote votes cast for or against an initiative. I-194’s proponents claim that the measure does not restrict nonprofits from hosting candidate forums or publishing voter guides, but this claim is not clearly supported by the text of I-194 or addressed in its key definitions.¹¹ I-194’s proponents make many similar claims about permissible activities by nonprofits without clear textual support.

The confusing wording of the “political spending power” definition also makes it unclear whether the prohibition applies to federal elections. The definition restricts such activity related to “an election held in this State,” which can be interpreted to include federal elections held in Montana. It is important to note that, to the extent that I-194 purports to apply to spending connected to federal

¹¹ The Montana Plan PAC, “Frequently Asked Questions,” <https://montanaplan.org/the-facts#faq> (accessed Oct. 14, 2026), “Can a nonprofit host candidate voter guides? Yes, so long as the activity is nonpartisan and even-handed.”

elections, it is likely preempted by the Federal Election Campaign Act of 1971 (“FECA”).

Similarly, “political spending power” is vague with respect to its prohibition of spending related to local initiatives, referenda, “or other questions formally certified or submitted to the electors of this state or any political subdivision of the state.” While appropriate punctuation in this clause may have clarified that it only covers items “certified or submitted” to electors, the lack of punctuation appears to create a broad category of prohibited activity that includes local ballot initiatives, municipal bond elections, and non-candidate elections. The drafting inconsistency in Section 4, identified above, creates additional ambiguity. The Montana Plan PAC’s own statements, however, indicate their intent that the prohibition apply to contributions of corporate treasury funds to ballot issues.¹²

Further, the term “anything of value” lacks any definition that would assist nonprofits in compliance with I-194’s restrictions. While nonprofits may offer in-kind assistance to other organizations engaging in political activities, such assistance, if determined to be “of value,” could be prohibited by I-194. There is also uncertainty about whether, and how, that restriction might apply to charitable programs, volunteer services, member communications, and other activities that may provide some ancillary and non-monetary benefit for a candidate or committee. I-194’s proponents claim that the measure does not restrict membership organizations from making “normal” communications with members, but this interpretation is not supported by the text of I-194.¹³ Similarly, the proponents frequently claim that only expenditures of corporate treasury funds qualifies as “anything of value,” but this interpretation is not supported by the text of I-194.¹⁴

Subsequent regulations may clarify which activities are prohibited and permissible, but there likely will be a chilling effect on the political activities of nonprofit organizations in the meantime.

¹² *Id.* “Nonprofits and advocacy organizations may continue their issue work, but they cannot use organizational treasury funds to support or oppose candidates or ballot measures.”

¹³ *Id.* “Membership organizations can continue communicating with their members . . . normal member communications and issue advocacy will not be impacted under I-194.”

¹⁴ *Id.* “The line is election spending by artificial entities. Nonprofits and advocacy organizations may continue their issue work, but they cannot use *organizational treasury funds* to support or oppose candidates or ballot measures” (emphasis added).

- b. Fundraising and Grantmaking. The broad restrictions on political activities will also require nonprofits to be increasingly mindful of their fundraising and grantmaking practices. Nonprofits should avoid fundraising specifically for such activities and should prohibit the use of grant funds for such activities.

The savings clause in Section 11 of I-194 likely does not invalidate existing donor agreements or donor intent, but it may prohibit a nonprofit organization from using the donor's funds as intended. If existing donor agreements do not include flexibility, nonprofits may be left with restricted funds that cannot be used without donor consent or a court order. Nonprofits and associations should review existing donor agreements for restrictions that may be implicated by I-194's prohibitions and, where necessary and feasible, seek donor consent for alternative use of restricted funds.

- c. Political Committees. Section 3 of I-194 provides that political spending power may be exercised by political committees "as provided by law," and Section 5 provides that I-194 does "not restrict the lawful activities of political committees organized under Montana law or federal law." Even if FECA does not preempt I-194's application to federal campaign activities, nonprofits are still free to form independent expenditure committees (often called "Super PACs") to conduct federal election activity, or Montana political committees to freely participate in state elections. Montana campaign finance law also permits existing entities that are not formed for the primary purpose of engaging in election activity to make certain "incidental" campaign expenditures and file limited disclosure reports as "incidental committees." Such reports include disclosure of only those donors making contributions specifically earmarked for a candidate or ballot issue, or that are made in response to a solicitation specifically for that election activity.¹⁵

I-194 does not specify whether a nonprofit's payment of administrative and fundraising expenses of a federal or Montana political committee constitutes "political spending power," or whether artificial persons can permissibly contribute to ballot initiative committees. However, its proponents indicate that such support from a (c)(4)'s treasury funds would be prohibited under I-194.¹⁶

¹⁵ Mont. Code Ann. §§ 13-37-229, 232 (2025).

¹⁶ The Montana Plan PAC, "Frequently Asked Questions," <https://montanaplan.org/the-facts#faq> (accessed Oct. 14, 2026), "[S]pending money to support or oppose a ballot measure would have to be done through a political committee funded by real people, *not through the nonprofit's general treasury*" (emphasis added).

Although corporations are prohibited from contributing to PACs, federal law permits a corporation to cover administrative and overhead expenses for its connected separate segregated fund (a “PAC”) without those payments being considered a contribution to the PAC. This is an important benefit for corporations that have connected PACs, as it enables them to use corporate treasury funds to cover overhead expenses while reserving precious “hard dollars” (raised from individuals) exclusively for candidate contributions. However, I-194 does not appear to include such an exception. Without this exception, Montana nonprofits with connected federal and Montana PACs might need to cover overhead expenses from the PAC’s “hard dollars,” normally reserved for candidate contributions, in order to avoid I-194 compliance issues. Donors tend to disfavor this practice, and this shift may require PACs to raise significant new funds just to cover overhead expenses previously paid from corporate treasury funds. Nonprofits sponsoring federal PACs or other political committees should consider their PACs’ ability to cover these expenses, and the potential reactions of donors.

Expected litigation regarding federal preemption, as well as further regulations and enforcement, may dictate whether Montana nonprofits may engage in certain political activity. There likely will be a chilling effect on this activity in the meantime.

- d. Regulations. Section 8 of I-194 empowers the Montana Secretary of State to “adopt rules and procedures necessary to implement and enforce” I-194, including those addressing forfeiture, reinstatement, disgorgement, certification of compliance, and due process. The rules and procedures are likely to include information addressing how organizations can dispute a finding of impermissible political spending, appeal rights, required compliance filings, and similar regulations. Other guidance or interpretive materials may also be published, whether from the Montana Secretary of State or non-governmental third parties. Such regulations or governmental guidance are highly unlikely to be published ahead of the January 1, 2027, effective date, less than two months from election day.¹⁷

¹⁷ By contrast, Hawai’i Act 11 takes effect July 2, 2027, more than a full year after becoming law on May 14, 2026.

- e. Compliance Obligations. If I-194 becomes law, nonprofits and associations incorporated or conducting business in Montana must prepare to comply with the new law by January 1, 2027.

Nonprofits must take stock of their current political activities in Montana and determine whether any are prohibited or restricted by I-194, including both its own activities and those conducted by the organization's grant recipients and payees. They should also review (and, where possible, amend) grant agreements to restrict grant recipients from engaging in activity prohibited under I-194. Updated grantee reporting forms and procedures can provide a structure for collecting information on grantee activities and guide initial compliance steps.

Nonprofits also should take steps to analyze their funding sources, including review of donor agreements or member contributions that may be earmarked for activities prohibited by I-194. Where possible, organizations should seek donor or member consent to re-designate restricted contributions and maximize unrestricted revenues.

Organizations also should consider whether certain activities can permissibly be conducted with a federal or Montana political committee, and what registration and reporting obligations may exist under federal or Montana law. Nonprofits should understand that some activity may require disclosure of donors beyond what is required by the U.S. Internal Revenue Service or the Federal Election Commission and may require disclosure of certain charitable contributions. Organizations with existing federal or Montana PACs should review nonprofit operating expenditures that might support PAC administration or operations. Where feasible, organizations should consider having the PACs absorb administrative expenses, at least until further guidance is available through regulations or the results of litigation.

Montana entities should carefully review governing documents (including Articles of Incorporation and Bylaws) to identify any corporate purposes, powers, or authorizations that might conflict with I-194. To the extent that any such prohibited powers are intertwined with permissible purposes, organizations should consider amendments that separate those powers to ensure that permissible powers are not invalidated along with impermissible ones.

Finally, Montana nonprofits and associations should stay up to date on legal and regulatory developments related to I-194, particularly as anticipated legal

challenges advance in court. If Montana is enjoined from temporarily enforcing I-194 while the challenges proceed, Montana organizations may benefit from additional time to come into compliance. Additionally, it is possible that Montana's legislature may pass amendments to the new statute to clarify ambiguities, delay effective dates, or make other needed changes.

VI. Conclusion

If passed, Initiative 194 will have an immediate impact on Montana nonprofit organizations and their activities. Broad restrictions, sparse details, vague terms, and legal challenges will likely create uncertainty for Montana nonprofits and their staff, members, and donors over a period of several years. Montana nonprofits can take immediate steps to review their programs, funding, spending, and governance to mitigate potential negative impacts, and prudent nonprofit leaders should stay informed on legal, legislative, and regulatory developments that may change or reduce their organization's compliance obligations.

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