

IN THE SUPREME COURT OF THE STATE OF MONTANA
OP _____

MONTANA MINING ASSOCIATION, MONTANA CHAMBER OF
COMMERCE, BILLINGS CHAMBER OF COMMERCE, KALISPELL
CHAMBER OF COMMERCE, MONTANA CONTRACTOR'S
ASSOCIATION, MONTANA TRUCKING ASSOCIATION, TREASURE
STATE RESOURCE ASSOCIATION, MONTANA STOCKGROWERS
ASSOCIATION, and MONTANA PETROLEUM ASSOCIATION,

Petitioner,

v.

AUSTIN KNUDSEN, in his official capacity as MONTANA ATTORNEY
GENERAL; and CHRISTI JACOBSEN, in her official capacity as MONTANA
SECRETARY OF STATE,

Respondents.

**PETITION FOR DECLARATORY RELIEF ON ORIGINAL
JURISDICTION**

EXPEDITED CONSIDERATION REQUESTED

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Montana Petroleum Association

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RELIEF REQUESTED

The Montana Mining Association (“MMA”), the Montana Chamber of Commerce (“Montana Chamber”), the Billings Chamber of Commerce, the Kalispell Chamber of Commerce, the Montana Contractor’s Association, the Montana Trucking Association, the Treasure State Resource Industry Association, the Montana Stockgrowers Association, and the Montana Petroleum Association (collectively, “Petitioners”) bring this original action under Montana Code Annotated § 13-27-605, seeking a declaration that Ballot Measure Number 10 (“BI-10”),¹ which proposes to amend Title 35 of the Montana Code Annotated, is legally insufficient because it is facially unconstitutional under both the U.S. Constitution and the Montana Constitution.

JURISDICTION

This Court has exclusive original jurisdiction to review the Attorney General’s legal sufficiency determinations in an action brought under Montana Code Annotated § 13-27-605. *See* Mont. Code Ann. § 3-2-202(3)(a). An opponent of a ballot issue may file an original proceeding in this Court challenging the Attorney General’s legal-sufficiency determination. *Id.* § 13-27-605(2).

¹ All citations to BI-10 are to the official text introduced by Proponents. *See* Exhibit 1.

FACTS

1. Petitioners certify there are no factual issues affecting this Court's consideration of this matter. Mont. Code Ann. § 3-2-202(3)(b)(i).

2. MMA is an industry organization, incorporated in 1973, which represents mining community interests throughout the State of Montana. MMA's membership consists of companies, organized both under Montana law and the laws of other states, that actively explore, mine, develop, refine, and process hard rock minerals, including metals, critical minerals, and other industrial materials. MMA's membership also includes companies providing goods, services, and technologies to the mining industry, other trade associations, non-governmental organizations, and academic groups.

3. The Montana Chamber is not-for-profit organization, organized in 1931, which represents business and economic interests throughout the State of Montana. The Montana Chamber consists of more than 2,000 member companies, organized under both Montana law and the laws of other states, representing every size, industry, and community in Montana.

4. The Billings Chamber of Commerce, the Kalispell Chamber of Commerce, the Montana Contractor's Association, the Montana Trucking Association, the Treasure State Resource Industry Association, the Montana Stockgrowers Association, and the Montana Petroleum Association are each

industry organizations organized under Montana law and representing business interests in Montana, including interests specific to the greater Billings area and the Flathead valley, as well as construction, trucking, industry, labor, agriculture, oil and gas, ranching, and recreation interests across the State.

5. On January 8, 2026, Jeff Mangan (“Proponent”) submitted the proposal for BI-10 to the Montana Secretary of State (“Secretary”).

6. On January 9, 2026, the Secretary sent the proposal to the Montana Legislative Services Division (“LSD”).

7. Around January 23, 2026, Proponent received recommendations from the LSD.

8. Proponent then submitted the final text of BI-10 to the Secretary. *See* Exhibit 1.

9. The Secretary accepted the final text and referred BI-10 to Attorney General Austin Knudsen.

10. The Attorney General is required to review the legal sufficiency of a ballot initiative and submit his opinion to the Secretary. Mont. Code Ann. §§ 13-27-217, -226(2).

11. The Attorney General’s statutory obligation to review legal sufficiency includes reviewing “the substantive legality of the proposed issue if approved by the voters.” Mont. Code Ann. §§ 13-27-110(7); *see also id.* § 13-27-226(2).

12. The First Judicial District Court has enjoined the Attorney General from evaluating substantive legality, however, in litigation unrelated to BI-10. *See Ellingson v. State*, ADV-2023-338, Doc. 30 (Feb. 5, 2024).

13. On February 27, 2026, MMA submitted comments to the Attorney General regarding the legal sufficiency of BI-10. *See* Exhibit 2.

14. The Montana Chamber submitted comments to the Attorney General regarding the legal sufficiency of BI-10. *See* Exhibit 3.

15. On March 6, 2026, the Attorney General issued an opinion that BI-10 is legally sufficient, with amendments, although the Attorney General did not address substantive legality because of the injunction in *Ellingson*. *See* Exhibit 4, at 1 n.1

16. The Attorney General determined that, if passed, BI-10 will likely cause significant material harm to one or more business interests if approved, including because BI-10 imposes an immediate, self-executing, loss of charter privileges on an artificial person that violates its prohibitions, and the artificial person can only be reinstated following an as-yet undefined, discretionary process. *See* Exhibit 4, at 5–6.

17. The Secretary then provided notice of the Attorney General’s determination and published an official text, redesignated as Initiative 194, on its website. Exhibit 5.

ANTICIPATED LEGAL ISSUES

This Petition raises a singular issue:

1. Whether BI-10 is facially unconstitutional and therefore legally insufficient to be placed on the ballot.

PURPOSE OF BI-10

BI-10 purports to amend Title 35 of the Montana Code Annotated to define “artificial persons” and “artificial person powers” in a way that limits the power exercised by artificial persons. Specifically, BI-10 excludes “political spending power” from artificial person powers. This restriction is coupled with, in the Attorney General’s words, “a harsh self-executing penalty” whereby artificial persons who exercise “political spending power” forfeit all charter privileges as a matter of law. *See* Exhibit 5, at 5. Such a statutory scheme is unconstitutional on its face.

ARGUMENT

I. BI-10 is legally insufficient because it is facially unconstitutional under both the U.S. Constitution and the Montana Constitution.

The Attorney General must review a proposed statutory initiative, Mont. Code Ann. § 13-27-226, for legal sufficiency, defined to include “the substantive legality of the proposed issue if approved by the voters.” *Id.* § 13-27-110(7).² This Court has

² The Legislature instructed the Attorney General to review substantive legality in Senate Bill 98, enacted in 2023. *See* Sec. 1, Ch. 647, L. 2023. This

the final say on legal sufficiency and the power to modify the Attorney General’s legal-sufficiency determination. *See id.* § 13-27-605(3)(c)(iii) (identifying this Court’s role as including assessing whether a proposed issue “compl[ies] with statutory and constitutional requirements governing submission of the issue to the electors”).

While this Court has cast doubt on the Attorney General’s authority to review substantive constitutionality as a component of legal sufficiency, *see, e.g., Hoffman v. State*, 2014 MT 90, ¶¶ 8–9, 328 P.3d 604; *Monforton v. Knudsen*, 2023 MT 179, ¶¶ 6–8, 539 P.3d 1078, it has yet to definitively resolve that issue, especially in light of the recent statutory changes. Petitioners therefore ask this Court to reconsider its prior suggestions and hold that, at least where an initiative is unquestionably unconstitutional, that the Attorney General has the authority to review substantive constitutionality. As the chief legal officer of the executive branch, *see* Mont. Const, Art. VI, § 4(4), the Attorney General must give legal opinions to the legislature, state agencies and commissions, and municipalities “upon *any question of law.*” Mont. Code Ann. § 2-15-501(7) (emphasis added). The Attorney General’s opinion is “controlling” unless overruled by a court. *Id.*; *see Bullock v. Fox*, 2019 MT 50, ¶¶ 23–49, 435 P.3d 1187. For over a century, the Attorney General has given

statutory change should eliminate this Court’s concern about the scope of its review of the Attorney General’s legal-sufficiency review expressed in *Montana Mining Ass’n v. State*, 2018 MT 151, ¶ 12, 420 P.3d 523.

opinions addressing the constitutionality of various government action. *See, e.g.*, Montana Attorney General Opinion 01-05-15 (Mar. 15, 1905), <https://courts.mt.gov/external/ag-opinions/01/54-15.pdf> (advising that the Legislature may pass a law requiring school children to be vaccinated without violating the U.S. Constitution). This Court has never suggested that such binding opinions would be an unconstitutional violation of the separation of powers—to the contrary, it has recognized the persuasive value of such opinions. *E.g.*, *State ex rel. Ebel v. Schye*, 130 Mont. 537, 541, 305 P.2d 350 (1956). Put simply, it does not violate separation of powers for the Attorney General to take a first crack at reviewing the substantive constitutionality of a ballot issue, at least where this Court has the final say on the matter.

Indeed, this Court has repeatedly addressed the substantive constitutionality of ballot issues before an election where an issue is “unquestionably and palpably unconstitutional on its face.” *McDonald v. Jacobsen*, 2022 MT 160, ¶ 14, 515 P.3d 777 (quoting *State ex rel. Steen v. Murray*, 144 Mont. 61, 69, 394 P.2d 761, 765 (1964)). A law is facially unconstitutional if “there is no set of circumstances in which [it] could be constitutionally applied.” *Broad Reach Power, LLC v. Mont. Dep’t of Pub. Serv. Regul.*, 2022 MT 227, ¶ 11, 520 P.3d 301. “Placing a facially defective measure on the ballot, thereby conveying the false appearance that a vote on the measure counts for something, when in fact the measure is invalid regardless

of how the electors vote, constitutes a senseless waste of time and money for all involved.” *Cottonwood Envt’l Law Ctr. v. Knudsen*, 2024 MT 313, ¶ 24, 560 P.3d 1227 (McKinnon, J., dissenting) (citation modified) (quoting *McDonald*, 2022 MT 160, ¶ 14; *Reichert v. State ex rel. McCulloch*, 2012 MT 111, ¶ 35, 278 P.3d 455); *see also State ex rel. Harper v. Waltermire*, 213 Mont. 425, 428, 691 P.2d 826, 828 (1984) (reviewing ballot issue challenge “beyond the power of initiative granted the people by the Montana Constitution”). Permitting facially unconstitutional initiatives like BI-10 to proceed to a vote of the electorate risks absurdity. *See Montanans Opposed to I-166 v. Bullock*, 2012 MT 168, ¶ 41, 285 P.3d 435 (Nelson, J., dissenting). Facial constitutionality is, thus, properly within this Court’s power to address at this stage. *MEA-MFT v. McCulloch*, 2012 MT 211, ¶ 18, 291 P.3d 1075. Therefore, the Attorney General’s conclusion that BI-10 is legally sufficient (albeit without evaluating substantive legality) should be reversed because BI-10 is facially unconstitutional on several grounds.

A. BI-10 violates the First Amendment of the U.S. Constitution because it restricts protected political speech

The First Amendment prohibits governments from “abridging the freedom of speech.” U.S. Const., amend. I; *see also McDonald v. City of Chicago*, 561 U.S. 742, 764 n.12 (2010); Mont. Const. Art. II, § 7. This protection extends to corporations. *Citizens United v. FEC*, 558 U.S. 310, 342 (2010) (compiling cases). And it is well-settled that the First Amendment protects political speech, including political

donations to both candidates and ballot issues. *See id.* Accordingly, corporations and other entities enjoy the same protections as individuals when it comes to donating money to political causes. *See id.* at 343. “The Government may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether.” *Id.* at 318–19; *see also id.* at 339 (“[A statute’s] prohibition on corporate independent expenditures is thus a ban on speech.”); *cf. FEC v. Ted Cruz for Senate*, 596 U.S. 289, 302 (2022) (“The First Amendment ‘has its fullest and most urgent application precisely to the conduct of campaigns for political office.’” (quoting *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971))). It is axiomatic, therefore, that the government cannot restrict speech based on disagreement with “its message, its ideas, its subject matter, or its content”—even if such speech is in the form of financial political contributions. *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) (citation omitted); *Mont. Chamber of Com. v. Argenbright*, 226 F.3d 1049, 1052–54 (9th Cir. 2000) (holding that a ballot initiative prohibiting “direct corporate spending in connection with ballot issues” was unconstitutional); *Am. Tradition P’ship v. Bullock*, 567 U.S. 516 (2012) (*per curiam*).

BI-10 squarely violates these principles. BI-10’s core provision prohibits entities from expending money or “anything of value” on political matters. *See* BI-10 § 4(1) (“Except as expressly provided by law for political committees, the State

of Montana does not extend political spending power to an artificial person, and an artificial person subject to [BI-10] 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.”). And BI-10 also prohibits corporations, non-profits, and any other limited liability entity from supporting or opposing ballot issues. BI-10 § 3(4). It punishes violations with automatic forfeiture of charter privileges, including limited liability status and perpetual duration. BI-10 § 7(1).

The prohibition proposed by BI-10 is materially identical to the prohibitions struck down in *Citizens United*, *Bellotti*, and *American Tradition Partnership*. See *Citizens United*, 558 U.S. at 321, 337, 361, 372 (holding unconstitutional a federal law prohibiting entities from engaging in electioneering communications); *First Nat. Bank of Bos. v. Bellotti*, 435 U.S. 765, 768, 786–95 (1978) (holding unconstitutional a state law prohibiting corporations from donating to or expending money or political campaigns); *Am. Tradition P’ship*, 567 U.S. at 516–17 (holding unconstitutional Montana’s law prohibiting corporate contributions or expenditures to candidates or political committees). Indeed, Petitioners have already been down this road when they defeated a previous attempt to define away an entity’s ability to speak in ballot-issue elections. See *Argenbright*, 226 F.3d at 1054. The Ninth Circuit was unambiguous: the attempt was unconstitutional because it “deprive[d] corporations of their ability to communicate political ideas directly to the electorate,

which impermissibly chills their speech and association rights and *precludes corporations from directly resisting potential laws that could put them out of business.*” *Id.* (emphasis added). It is no different here. BI-10 is unquestionably unconstitutional under binding precedent.

Nor can BI-10 survive scrutiny based on its redefinition of First Amendment rights as powers granted by state law. *See* BI-10 §§ 2(2), 2(6)(c) (recasting entities political-speech rights as a power granted by state law). The U.S. Supreme Court has repeatedly made clear that “States are [not] free to define the rights of their creatures without constitutional limit.” *Bellotti*, 435 U.S. at 778 n.14. That is because “[t]he Constitution deals with substance, not shadows.” *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 230 (2023) (quoting *Cummings v. Missouri*, 71 U.S. 277, 4 Wall. 277, 325 (1867)). Accordingly, Montana cannot eliminate entities’ speech rights through definitional gymnastics. *See Agency for Int’l Dev. v. Alliance for Open Soc’y Int’l, Inc.*, 570 U.S. 205, 215 (2013) (warning that the First Amendment should not “be reduced to a simple semantic exercise” (citation omitted)). Notably, there is no principled way to distinguish entities’ political speech from other forms of disfavored speech—anti-government speech, activist organizations’ speech, and religious minorities’ speech, for example. If entities’ political speech could be effectively silenced through a

simple definitional exercise, nothing would prevent states from eliminating entities' ability to speak on all manner of subjects. That cannot be right.

Because there is no set of circumstances to which BI-10 could be applied without violating the First Amendment,³ BI-10 is legally insufficient for the ballot.

B. BI-10 is unconstitutionally vague because it fails to put a person of ordinary intelligence on notice of how to abide by the statute and because it is unclear in its geographic scope.

A statute is unconstitutionally vague if it “fails to clearly mark the boundary between permissible and impermissible speech.” *Buckley v. Valeo*, 424 U.S. 1, 41–42 (1976). Vague laws are void for three reasons: “(1) to avoid punishing people for behavior that they could not have known was illegal; (2) to avoid subjective enforcement of the laws based on ‘arbitrary and discriminatory enforcement’ by government officers; and (3) to avoid any chilling effect on the exercise of First Amendment freedoms.” *Humanitarian L. Project v. U.S. Treas. Dept.*, 578 F.3d 1133, 1146 (9th Cir. 2009) (citation omitted). Accordingly, “[a] statute must be sufficiently clear so as to allow persons of ‘ordinary intelligence a reasonable opportunity to know what is prohibited.’” *Foti v. City of Menlo Park*, 146 F.3d 629,

³ Even if BI-10’s proponents can conjure some isolated instances in which BI-10 could be applied without violating the First Amendment, it would remain extremely overbroad. A law is “facially unconstitutional even though it has lawful applications” when it “prohibits a substantial amount of protected speech’ relative to its ‘plainly legitimate sweep.” *United States v. Hansen*, 599 U.S. 762, 769–70 (2023) (citation omitted). BI-10 is extraordinarily overbroad, and risks chilling protected First Amendment speech of both entities and individuals.

638 (9th Cir. 2009) (citation omitted). BI-10 is unconstitutionally vague, and therefore, legally insufficient to appear on the ballot.

BI-10 restricts entities from “expend[ing] money or anything of value” to support, oppose, or influence political initiatives or candidates. BI-10 § 3(4)(a). A person of ordinary intelligence would lack notice of how to abide by this prohibition. An artificial person’s contribution of “anything of value” to a candidate or election issue might include allowing a group to use a facility where members of that group discuss political matters. It might include an employee’s volunteer time to an election-related cause during a lunch break. It could even include an employee’s otherwise protected political speech to fellow employees during work hours. It simply is not clear. Many entities will, understandably, attempt to avoid any political or election-related issue for fear of losing the ability to operate. The result of BI-10, given its vague terms and its mandatory sanctions, will be a massive chilling on political discourse in Montana.

Further, BI-10 is not limited to entities’ political speech in Montana or directed at Montana elections. BI-10 purports to regulate entities “organized or existing under the laws of another jurisdiction,” so long as an entity is “authorized to transact business, is otherwise transacting business, . . . holds property in Montana,” or exercises its powers of political speech in Montana. BI-10 § 3(1); *see also id.* § 5(2). And while BI-10 does disclaim any intent to “affect privileges

conferred by the laws of another state,” *id.* § 7(3), its core prohibition remains unclear in its scope, *see id.* § 4(1). For example, BI-10 might strip a national grocery store of its ability to operate in Montana if it exercised its right of political speech in Wyoming. Or a business incorporated under Montana law might forfeit its limited-liability shield if donated money to a Washington senator’s campaign. BI-10 therefore will likely chill entities with Montana ties from speaking on political matters outside the state for fear of BI-10’s extreme consequences.

Moreover, where enforcement is vested in the Attorney General and local prosecutors, *see* BI-10 § 8(2), (3)—both of which are political offices—there is always a potential for arbitrary and discriminatory enforcement. Even without assuming bad faith, what might appear like an apolitical activity to one could, depending on political preference, look like a prohibited in-kind donation to others. It is partly because of this potential that the First Amendment prohibits governments from restricting core political speech. *See N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 274 (1964) (describing the debates over the Sedition Act and noting that “distrust of concentrated power” motivated the First Amendment). But without clear terms, BI-10 risks politically motivated enforcement.

Because BI-10 fails to draw a sufficiently clear boundary and risks chilling the First Amendment activities of both entities and natural persons, it is unconstitutionally vague.

C. BI-10 violates the Unconstitutional Conditions Doctrine by conditioning entities' benefits on the relinquishment of First Amendment rights

Even properly restricted to conduct impacting Montana, BI-10 violates the unconstitutional conditions doctrine. A state cannot condition a privilege, like doing business within the state, on the relinquishment of a constitutional right, like speaking. *See, e.g., Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013). “[W]hether the government ultimately succeeds in pressuring someone into forfeiting a constitutional right, the unconstitutional conditions doctrine forbids burdening the Constitution’s enumerated rights by coercively withholding benefits from those who exercise them.” *Id.* at 606. Indeed, the U.S. Supreme Court recognized as much in *Citizens United*, where it opined that states cannot “exact as the price of” certain “special advantages—such as limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets” the forfeiture of fundamental First Amendment rights. 558 U.S. at 351 (citation omitted).

BI-10 blatantly violates this restriction. It defines “Charter privilege” as “any legal benefit” to an artificial person “that exists only because the State of Montana confers it.” BI-10 § 3(3). It further conditions entity formation on an “absence of political spending power.” *See id.* § 4(2). BI-10 thus requires artificial persons to forego their First Amendment rights to effectuate their “charter privilege[s]” both in and out of the State. *See id.* § 3(3). Although the State may define certain charter

privileges attached to the entities it licenses, such definitional powers do not extend to coercing persons—even “artificial persons”—to forfeit their constitutional rights. “Extortionate demands of this sort” cannot stand. *Koontz*, 570 U.S. at 604.

CONCLUSION

Petitioners urge this court to acknowledge the unconstitutionality of BI-10. B-10 is a violative restriction on political speech. It matters not that Montana law authorizes the creation of entities—the U.S. Constitution cannot be so easily circumvented. Montana cannot condition the privilege of doing business in Montana on the loss of First Amendment rights. And BI-10’s vague terms will cause significant First Amendment chill to both entities and individuals. This Court should therefore reverse the Attorney General’s legal sufficiency determination on an expedited schedule.

DATED this ____ day of March, 2026.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rules 11, 14(9)(b) of the Montana Rules of Appellate Procedure, I certify that this Petition is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 3,489 words, excluding caption, tables, certificates, and signature blocks.

/s/ Tracey Wayne
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CERTIFICATE OF SERVICE

I, Gage Hart Zobell, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ to the following on 03-16-2026:

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