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MEMORANDUM

March 17, 2026

SUBJECT: Intersection of HJR 31 and the First Amendment
(HJR 31; Work Order No. 34-LS1226\A)

TO: Representative Andrew Gray
Attn: Dylan Hitchcock-Lopez

FROM: Alpheus Bullard 
Legislative Counsel

You asked whether HJR 31 raises an issue under the First Amendment of the United States Constitution, specifically under the Supreme Court's decision in *Citizen's United*.¹ The First Amendment of the Constitution of the United States protects freedom of speech and freedom of association.² In *Citizens United*, the Court held that the government cannot suppress a corporation's political speech³ based on the speaker's corporate identity.

HJR 31 would amend the Constitution of the State of Alaska to prohibit, except for a group organized under state law specifically for the principal purpose of influencing the outcome of one or more elections, a corporation from making contributions or expenditures in an election in the state involving a candidate or initiative, referendum, or recall.

The short answer is yes, the prohibition raises a First Amendment issue. Political campaign contributions and expenditures fall within the protections of the First Amendment.⁴ What is less clear is how a court might address the issue. HJR 31 raises a novel issue of law that has not yet been addressed by a court of competent jurisdiction.

¹ *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 357-59 (2010).

² The First Amendment provides: "Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Constitution, Amend. I. This provision is made applicable to the states through the Fourteenth Amendment. Article I, sec. 5, of the Constitution of the State of Alaska similarly provides that "[e]very person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right."

³ The corporate speech at issue was independent election campaign expenditures made by the corporation. 558 U.S. 310.

While HJR 31 may appear to be at odds with the Court's holding in *Citizens United* as to the First Amendment rights of corporations, a similar constitutional amendment proposed in Montana relied on the legal premise that limiting the authority provided a corporation (in this case providing that a corporation may not make expenditures or contributions in elections in the state) is legally distinguishable from prohibiting a corporation that has the legal power to make expenditures or contributions in relation to those elections from making expenditures and contributions. The argument is essentially that by removing a corporation's power to make contributions and expenditures, the constitutional amendment effectively bypasses *Citizens United* before the question of the corporation's First Amendment rights arises.

The Montana amendment proposal would add a section to the Montana constitution defining the rights, powers, and privileges held by an "artificial person" in that state. In January of this year, in *Transparent Election Initiative v. Knudsen*,⁵ the Montana Supreme Court found that the proposed amendment was not in the required form,⁶ and, because the initiative was not in the proper form, the court did not address the constitutional amendment's possible First Amendment issues.⁷

A website connected with the proposed Montana constitutional amendment entitled the "Montana Plan" and a related initiative that would make similar changes in Montana state statutes, provides a succinct summary of the constitutional arguments:

[Does the Montana Plan regulate] speech or elections?

No. The Montana Plan does not regulate speech, campaigns, candidates, or elections. It does not tell any human being what they can or cannot say. Instead, it specifies what powers the State grants to the artificial entities it creates. The Supreme Court has said for two centuries that states' authority to define and redefine their corporations is absolute. Political participation remains fully available to people, while the corporate form is defined as a business and organizational tool rather than a political actor.

⁴ *Buckley v. Valeo*, 424 U.S. 1 (1976).

⁵ 581 P.3d 1285.

⁶ The court found that the proposed initiative, which amended more than one section of the state constitution, violated art. XIV, sec. 11, of the Montana Constitution, which provides: "If more than one [constitutional] amendment is submitted at the same election, each shall be so prepared and distinguished that it can be voted upon separately." *Id.* at 1288.

⁷ *Id.* at 1290.

[...]

Does The Montana Plan violate Citizens United?

No. Citizens United addressed whether campaign-finance laws could apply to corporations that already possessed political-spending power under state law. The Montana Plan addresses a different question: which powers states choose to grant to the artificial entities they create in the first place. Citizens United did not require states to grant corporations political-spending power. No Supreme Court case has ever held that states must do so.

Won't the courts just strike [the Montana Plan] down?

Courts review laws as written and as applied. The Montana Plan fits squarely within long-standing doctrine recognizing that states control the powers of the artificial entities they create. To strike it down, a court would have to say that corporations possess a constitutional entitlement to political-spending power that exists independently of state law. No court has ever said that, or even come close to saying that.

Is this an attempt to "get around" the Constitution?

No. It is an effort to operate squarely within existing constitutional doctrine. The Montana Plan does not regulate rights or restrict speech; it defines the powers the state chooses to grant to the artificial entities it creates. Nothing in the Constitution requires states to create corporations with political-spending authority, and no Supreme Court precedent has ever held otherwise. [...]⁸

HJR 31 raises novel issues of law involving the intersection of the First Amendment and a state's authority to define the powers of legal persons created, or doing business, under its laws. These questions have not yet been subject to binding or persuasive judicial review. I cannot predict the outcome of any potential First Amendment challenge to this measure or whether an Alaska court would find that regulating corporate powers is distinguishable from regulating corporate speech.

If you have questions, do not hesitate to contact me.

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⁸ See "Frequently asked questions" at <https://transparentelection.org/resources>.