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IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court No. OP 12-0439

MONTANANS OPPOSED TO I-166, a Political Committee, SENATOR DAVE LEWIS, Individually, and as an Elected Member of the Montana Legislature, PHIL LILLEBERG, Individually, and as an Owner of FP, Inc, a Montana Corporation.

Petitioners,

v.

STATE OF MONTANA HONORABLE STEVE BULLOCK, in his capacity as Attorney General and the HONORABLE LINDA McCULLOCH, in her capacity as the Secretary of State.

Respondents.

AMENDED PETITION FOR REVIEW OF ATTORNEY GENERAL'S DETERMINATION OF LEGAL SUFFICIENCY AND BALLOT ISSUE STATEMENTS

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STATEMENT OF THE CASE

Petitioner respectfully submits to this Honorable Court pursuant to Mont. Code Ann. Section 13-27-316, their request that the Court find I-166 is not legally sufficient to appear on the state's general election ballot, and that the statements prepared for the petition and ballot do not meet the requirements of Mont. Code Ann. § 13-27-312. Petitioners further request that the Court remove I-166 from the ballot and declare all petitions submitted on the proposed measure void.

At best, I-166 is an odd mixture of resolution, law, constitutional amendment and revision and, as such, is not properly before the people for their vote. I-166 is quite simply put, a sham or poll presented in a manner not comporting with law.

It is precisely these kinds of ill-conceived notions the legislature sought to address in giving the Attorney General authority to conduct a legal review of the statutory and constitutional requirements to submit proposals to the electorate.

Is there an appropriation?

Is there singleness of subject?

Are multiple constitutional amendments?

Is it a constitutional revision?

Does the measure propose the adoption of law, or is it merely a resolution?

Do the statements comply with legal requirements?

Does the measure propose amending to the U.S. Constitution or seek to affirm the legislature on such an amendment?

The answers to each of those questions do not require the Attorney General, or the Court, to delve into substantive or meritorious legal claims requiring further factual or legal development. The answers are found within the text of the proposed measure and the basic understanding of the contents of the Constitution.

The deficiencies of I-166 were fundamentally apparent from the beginning of the process. The Legislative Services Division pointed them out on March 14, 2012, when conducting the mandatory legal review. I-166's sponsors rebuffed them, the Attorney General failed to even address them, and the Secretary of State ignored them. While the impacts of Petitioners' prayer for relief may seem harsh, responsibility rests with those that first prepared and then approved the faulty and illegal petition prior to the proposal being circulated for signature in a useless effort to qualify it.

JURISDICTION AND VENUE

The Supreme Court of the State of Montana has original jurisdiction in this matter pursuant to Mont. Code Ann. § 3-2-202 (3)(a), which provides:

> The supreme court has original jurisdiction to review the petitioner's ballot statements for initiated measures . . . and the attorney general's legal sufficiency determination in an action brought pursuant to 13-27-316.

Venue is proper before the Supreme Court of the State of Montana pursuant to Mont. Code Ann. § 3-2-202, and by reference therein, Mont. Code Ann. § 13-27-316, which provides:

> If the opponents of a ballot measure believe that the petitioner ballot statements approved by the attorney general do not satisfy the requirements, of 13-27-312 or that the attorney general was incorrect in determining the petition was legally sufficient opponents may, within 10 days of certification to the governor file an original proceeding with the supreme court challenging the adequacy of the statements or the legal sufficiency determination; and further, that, an original proceeding in the supreme court is the exclusive remedy for a challenge to the statements and sufficiency determination.

PARTIES

Petitioner, Montanans Opposed to I-166, is a political committee which opposes I-166.

Petitioner, Phil Lilleberg, individually and as an owner of FP, Incorporated opposes I-166. FP, Inc. is a small, two-person, family owned , Montana for-profit corporation.

Petitioner Dave Lewis is an elected official serving as State Senator representing Montana Senate District 42. Senator Lewis is opposed to I-166. Senator Lewis opposes I-166 because he has a difference of opinion as to the content of the petition, and because, as an elected official and individual, his interests in functions of government are negatively impacted by the subject contained in the ballot issue. Senator Lewis is a holdover Senator who will serve in

the upcoming 2013 Montana Legislature and will be charged with voting in a specific manner to abide by the policy established in I-166 should it pass. Senator Lewis also has an interest in the Montana initiative process and in seeing that the Constitutional principles established in Article III, Section 4, and Article V, of the Constitution of the State of Montana are adhered to.

Respondent Steve Bullock, Attorney General for the State of Montana, is statutorily responsible for making a determination of legal sufficiency for I-166 and approving the statements. The Office of the Attorney General is in the Justice Building, Helena, Montana in the County of Lewis and Clark.

Respondent Linda McCulloch, Secretary of State for the State of Montana, is statutorily responsible for approval or rejection of petitions submitted as a proposed ballot measure including coordinating various functions relating to circulation and approval of the petition, providing sample petitions and communication in conjunction with or for the State of Montana with ballot issue Proponents, designated government entities, the Attorney General, and the Governor. Collectively, Office of the Attorney General and Office of the Secretary of State shall be referred to throughout as "Respondents".

CAUSE OF ACTION

This is an action for judgment arising from the manner in which the Office of the Attorney General of the State of Montana erroneously made a legal

sufficiency determination for a ballot initiative, I-166, proposed for the November 5, 2012, Montana general election ballot. Petitioners seek such relief because:

a. The Office of the Attorney General failed to properly review the proposed ballot issue for legal sufficiency and compliance with statutory and constitutional requirements governing submission of the proposed issue to the electors of Montana.

b. The proposed Statement of Purpose approved by the Attorney General does not meet the requirements of Montana law in that it does not express a true and impartial explanation of the proposed measure in plain, easily understood language and it unnecessarily creates prejudice for the issue. Further, the Statement of Purpose is argumentative and does not otherwise comply with requirements of law.

c. The proposed Statements of Implication approved by the Attorney General do not meet the requirements of Montana law in that the statements do not express a true and impartial explanation of the proposed measure in plain, easily understood language and the statements unnecessarily create prejudice for the issue. Further the Statements of Implication are argumentative and do not otherwise comply with requirements of law.

d. The Secretary of State did not reject the proposed initiative despite the authority and obligation to do so because of procedural defects.

BACKGROUND AND PROCEDURAL HISTORY

Article III, section 4, of the Constitution provides that the people may enact laws by initiative on all matters except appropriations and local or special laws.

The laws governing the procedures and requirements for submitting ballot issues are primarily contained in Mont. Code Ann. Title 13, chapter 27, part 2.

In accordance with the requirements of Mont. Code Ann. § 13-27-202, I-166 Proponents submitted the text of the proposed ballot issue to the Secretary of State on February 28, 2012. The Secretary of State forwarded a copy of the proposed ballot issue and statements to the Legislative Services Division (LSD) for review.

The LSD reviewed as required by law the text and the statements for clarity, consistency and conformity with: the most recent edition of the bill drafting manual; the requirements of Mont. Code Ann. § 13-27-312; and any other factors the staff considers when drafting proposed legislation.

On March 14, 2012 the LSD recommended revisions to I-166 Proponents, and I-166 Proponents responded to the recommendations on March 19, 2012.

The Secretary of State then referred a copy of the proposed issue and statements to the Attorney General on March 21, 2012 for determination of legal sufficiency and approval of the ballot statements.

An Assistant Attorney General returned the petition with an erroneous legal sufficiency determination and the defective statements to the Secretary of State on

April 19, 2012. It is unclear from the letter whether the Attorney General, Steve Bullock, approved the statements and reached the legal sufficiency determination as required by Mont. Code Ann. § 13-37-312.

Despite these deficiencies, on April 20, 2012, the Secretary of State issued a letter and sample petition to the I-166 Proponents authorizing signature gathering to commence when she otherwise had the authority and obligation to reject the issue because of these procedural defects. The attached Exhibit, Exhibit 1, contains the faulty statements and the text of the illegal petition.

ARGUMENTS
CHALLENGE TO ATTORNEY GENERAL'S DETERMINIATION OF LEGAL SUFFICIENCY

Court pre-election review should not be routinely conducted. This protects and preserves the rights of voters to change law. However courts must reserve the right to declare measures invalid because it is so defective. *Harper v. Waltermire*, 213 Mont., 425, 428, 691 P.2d 826, 828 (1984); and *Cobb v. State*, 278 Mont. 307, 924 P.2d 268 (1996).

Facially defective measures create a sham of the voting process by conveying the false appearance that a vote on a measure counts for something, when in fact the measure is invalid regardless of how electors vote. *Reichert v. McCulloch*, 2012 MT 111, 375 Mont. 92, 278 P.3d 455. Such is the case here with

I-166 because the proposed measure is either a non-binding resolution or a binding law. In either instance it should not stand.

A. The Attorney General's determination that I-166 is legally sufficient is erroneous because I-166 is a resolution not a law.

The Attorney General's determination concerning legal sufficiency is incorrect and does not comply with the legal requirements for such a determination because I-166 does not propose the adoption of a law. I-166 is merely a legislative resolution and the Montana Constitution does not give the people the power to adopt resolutions. Art. III Section 4. of the Constitution of Montana provides: "(1) The people may enact laws by initiative....".

Taking Proponents at their word I-166 is a "non-binding statement from the people" in response to the U.S. Supreme Court's decision to allow corporate independent expenditures in elections. To achieve this, I-166 Proponents establish a "policy" which according to their lead petitioner, Jonathan Motl, says to Montana elected and appointed officials "work to change the law of the land so that the political system belongs to human beings not corporations." Mr. Motl goes on to describe I-166 as a directive to find what could work within Citizens United, and that I-166 is non-binding, lawmakers wouldn't have to do anything. (Wordpress.com, Article by Dan Boyce, dated February 28, 2012).

Because I-166 would have no binding legal effect, and does not propose law, it is, therefore, an impermissible use of the initiative powers granted pursuant to Article III, Section 4. of the Constitution of the State of Montana.

A law is a body of rules of action or conduct prescribed by controlling authority, and having binding legal force. Law is "that which must be obeyed and followed.... subject to sanction." (*Black's Law Dictionary Abridged Sixth Edition*). The initiative process in Montana's Constitution was designed to enact laws, constitutional amendments, and initiate calls for a state constitutional convention. *Harper,* 213 Mont. at 429, 691 P.2d at 829. This power does not include the power to enact what amounts to a legislative resolution. *Id.*

To qualify for submission to voters, an initiative must propose to enact a law. An initiative which seeks to do something other than enact a statute—which seeks to render an administrative decision, adjudicate a dispute, or declare the views of a resolving body—is not within the initiative power reserved to the people. (See Exhibit 2, Montana Attorney General rejection of proposed 1994 ballot measure, citing *AFL-CIO v. Eu*, 686 P.2d 609, 627 (Cal. 1984)).

B. The Attorney General's determination that I-166 is legally sufficient is erroneous because I-166 requires elected officials to vote a certain way and dictates or predetermines specific results.

If I-166 is binding and elected and appointed officials abide by the proposed policy, as charged, I-166 dictates specific results and requires elected officials to vote in a particular predetermined manner which is legally prohibited.

I-166 abrogates all legislative discretion with respect to the subject matter contained therein. The measure is repugnant to fundamental principles of representative government, and if adhered to by elected officials amounts to a constitutional amendment masquerading as a mere resolution or guiding policy. A rubber stamp legislature cannot fulfill its function to operate as a deliberative body.

I-166 is a charge or directive to the Legislature and other elected government officials to take specific actions or act in a predetermined manner dictating a specific result. In *Harper v. Waltermire*, this Court specifically held that while initiative powers should be broadly construed, the Court "cannot fail to recognize the independent legislative power vested in the legislature" in Article V. The ballot measure stricken in that instance also would have, like I-166, compelled the Legislature to reach a specific result. In that instance, as it should here, this Court held that "[s]uch coercion is repugnant to the basic tenets of our representative form of government guaranteed by the Montana Constitution." *Id.* Because the default provisions of Title 13 make it so the ramification of codifying I-166 into Title 13 makes a legislator who does not abide by the policy guilty of a misdemeanor (i.e., criminal) violation of the election laws. Mont Code Ann. § 13-

35-103 provides that "[a] person who knowingly violates a provision of the election laws of this state for which no other penalty is specified is guilty of a misdemeanor. I-166 specifies no other penalty.

C. The Attorney General's determination that I-166 is legally sufficient is erroneous because I-166 acts as a resolution to require proposal of an Amendment to the U.S. Constitution.

I-166 compels Montana's congressional delegation to propose an amendment to the United States Constitution in direct contradiction to the provisions of the US Constitution, and precedent established by the Montana Supreme Court in *Harper v. Waltermire*, 213 Mont. 425, 691 P.2d 826 (1984).

The U.S. Constitution, Article V, provides in part that constitutional amendments may be offered by:

> Congress, whenever two thirds of both Houses shall deem it necessary shall propose Amendments to this Constitution, or, on Application of the Legislatures of two-thirds of the several States shall call a Convention for proposing Amendments, which, in either Case, shall be valid....when ratified by the Legislatures of three fourths of the several States or by Conventions in three fourths thereof....

Clear precedent in both the U.S Supreme Court and this Court establishes the intent of the federal constitutional framers that the powers conferred to amend the U.S. Constitution reside exclusively within the functions the U.S. Congress and the legislatures of each state and not with voter, directly or indirectly, via initiative or referendum. *Hawke v. Smith*, 253 U.S. 221 (1920); and *State ex rel. Hatch v. Murray*, 165 Mont. 90, 526 P.2d 1369 (1974); see also *Harper v. Waltermire,* 213 Mont. 425, 691 P.2d 826. Submission to voters who cannot constitutionally compel

acts of the legislature regarding to constitutional amendments is a useless act. *Hatch,* 165 Mont. at 94-95, 526 P.2d at 1371.

D. The Attorney General's determination that I-166 is legally sufficient is erroneous because I-166 effectively, and is indeed, an amendment and revision to the Constitution of the State of Montana which violates the rule against multiple amendments in a single vote.

I-166 contains more than one subject. I-166 implements the intended policy that corporations are not human beings entitled to constitutional rights, bans corporate contributions and expenditures in elections, and requires that all contributions and spending in elections somehow be "level" and limited while also requiring Montana's congressional delegation to propose an amendment to the U.S. Constitution--even dictating procedural methods the delegation must employ.

I-166 "charges" elected and appointed official to act to prohibit, whenever possible, corporations from making contributions to or expenditures on campaigns, and to promote actions that accomplish a level playing field in election spending. *See* I-166 Section 3. Policy(1). While purporting to generally direct elected and appointed officials in Section 3(2), I-166, Section 4 then goes on to specifically charge or direct the Congressional delegation and the Montana legislature to "propose" and "ratify" an amendment to the United States Constitution. I-166 is attempting to do, through statutory initiative, that which it is prohibited from doing even through a constitutional amendment.

Restrictions on acts of the legislature apply to the people when enacting laws via initiative or referendum in addition to other specific constitutional restrictions. *Town of Whitehall v. Preece*,1998 MT 53, 288 Mont. 55, 956 P.2d 743.

Montana's constitution clearly requires a separate vote on separate amendments even when it can be argued that an initiative meets the separate single-subject requirement. Mont. Const. Art. XIV, Section 11; *Marshall v. State,* 1999 MT 33, ¶ 21, 293 Mont. 274, ¶ 21, 975 P.2d 325, ¶ 21. It is possible that voters may favor one or more components of I-166, but not all of it. It may be possible that voters want to promote a policy that corporations are not human beings for purposes of campaign finance laws while still having other constitutional rights. A voter may agree with the primary provisions of the proposed policy while opposing the charge to elected and appointed officials to act in a predetermined manner or to mandate that elected officials propose and ratify an amendment to the United States Constitution. See generally, *Marshall v. State*, 1999 MT 33, 293 Mont. 274, 975 P.2d 325.

If followed, as charged in I-166, the proposed measure simultaneously amends numerous parts of the Constitution of the State of Montana, not the least of which are: Article II, Sections 4 and 7; Article V, Sections 1, 8, 10, 11, (emphasis added), and 12; Article VI, Sections 4, and 10 (emphasis added); Article VII; Article XI; and Article XIII, Section 1; among others.

Reading the Attorney General's statements and the text of I-166, we must conclude it "establishes a state policy that corporations are not entitled to constitutional rights because they are not human beings." I-166 clearly amends those constitutional provisions mentioned above and numerous others. Applying only the statutory and legal requirements governing submission of I-166 to the electors, and ignoring consideration of substantive legal defects if approved, the impact of removing corporations from the rights enjoyed by "persons" amends the Montana Constitution at least 15 times. Specifically those include: Article II, Sections 3, 4, 7, 8, 9, 10, 11, 12, 16, 17, 18, 22, 24, 25, and 29. I-166 does not distinguish between corporate types and therefore applies to all corporations with enumerated rights. Consequently, the property tax exemption for municipal corporations is eliminated. See Article VIII, Section (5)(a).

E. The statements prepared or approved by the Attorney General do not meet the requirements of law.

The Attorney General must approve or prepare statements that meet the requirements of Mont. Code Ann. Sec. 13-27-312. The statements prepared for I-166 fall well short of the requirements contained in that statute, or refer to matters which are clearly not within the scope of the initiatives powers granted pursuant to Article III, Section 4, of the Constitution of the State of Montana. This Court, in *Sawyer Stores, Inc. v. Mitchell, et al.*, 103 Mont. 148, 62 P.2d 342 (1936), stated that the statements must provide:

> [A] fair portrayal of the chief features of the proposed law in words of plain meaning so that it can be understood by the person entitled to vote. It ought not be clouded with undue detail, nor be so abbreviated as not to be readily comprehensible. It ought to be free from any misleading tendency, whether of amplification, of omission, or fallacy.... It must in every particular be fair to the voter to the end that intelligent enlightened judgment may be exercised by the ordinary person deciding how to mark the ballot.

As provided above, the statements for I-166 fail to meet legal requirements.

PETITIONERS' ALTERNATIVE STATEMENTS

Pursuant to Mont. Code Ann. § 13-27-316, Petitioners are required to propose alternative ballot statements that satisfy the requirements of Mont. Code Ann. § 13-27-312. In accordance with that legal directive, Petitioners maintain that any statement that contains a description of the matters herein described is an alternative which satisfies the requirements of Mont. Code Ann. § 13-27-312. Similarly any statement which omits prejudicial language herein described also meets the requirements of that section of the Code.

The following matters must be included in a statement that would satisfy the statutory requirements. The statements must contain the actual effects of the initiative; including descriptions that I-166 eliminates all constitutionally guaranteed constitutional rights, not just the right of Freedom of Speech; that it charges elected representatives to vote in a specified way and dictates the results of legislation impacted by the policy; and identifies statutes and constitutional provisions actually affected. At a minimum, the Court should strike provisions

relating to the proposed resolution as it relates to the adoption of an amendment to the U.S. Constitution, thereby eliminating a major provision of the initiative and rendering signatures collected under any circulated petitions void.

Petitioners propose the following alternative ballot statements that satisfy the requirements of Mont. Code Ann. § 13-27-312.

> **Statement of Purpose:** Ballot initiative I-166 establishes a state policy that corporations are not entitled to any constitutional rights because they aren't ~~are not~~ human beings, and ~~charges~~ mandates (or encourages) Montana elected and appointed officials, state and federal, to implement that policy. With this policy, the people of Montana establish that there should be a level playing field in campaign spending, by limiting everyone's political contributions and spending and ~~in part by~~ prohibiting corporate campaign contributions and expenditures ~~and limiting political spending in elections~~. ~~Further, Montana's congressional delegation is charged with proposing a joint resolution offering an amendment to the United States Constitution establishing that corporations are not human beings entitled to constitutional rights.~~
>
> **Statements of Implication:** FOR/AGAINST ~~charging~~ mandating Montana ~~elected and appointed~~ officials~~, state and federal,~~ ~~with~~ to implementing ~~a~~ policy that corporations are not human beings with any constitutional rights and leveling all political spending.

Should the Court conclude the measure is non-binding, Petitioner maintains that the word "mandates", as appearing above, be changed to "encourages."

PRAYER FOR RELIEF

Petitioners respectfully request that judgment as follows:

1. That the Court overrule the Attorney General's determination concerning legal sufficiency of the petition as incorrect because it is not in compliance with the legal requirements for such a determination thereby barring I-166 from appearing on the general election ballot.

2. I-166 contains numerous amendments to the constitution via statute without a separate vote, contains multiple amendments and is, in fact, a proposed constitutional revision and in so ordering that it may not appear on the ballot.

3. That the ballot statements approved by the Attorney General do not satisfy the requirements of Mont. Code Ann. § 13-27-312.

4. That, if necessary, the Court modify the ballot statements in accordance with the Court's own statements or alternative statements proposed by Petitioners.

5. That pursuant to Mont. Code Ann. § 13-27-316(4), and as other matters of law may provide, the Court declare petitions submitted with statements prior to the Court's revisions are void, and the issue may not appear on the ballot.

6. Award Petitioners' costs and expenses under the private attorney general provisions, and other such relief as the Court deems proper.

NOWTHEREFORE Petitioners hereby submit the aforementioned questions only as to whether the Attorney General and Secretary of State acted within the statutory and constitutional requirements governing submission of I-166 to Montana's electors within the ambit of Mont. Code Ann. § 13-27-316(2) and (3)(c)(ii) and (iii). In so doing, Petitioners hereby certify the absence of factual issues or stipulate to file any factual record necessary pursuant to Mont. Code Ann. § 3-2-202(3)(b).

RESPECTFULLY SUBMITTED this _____ day of July, 2012.

By:_____
Chris J. Gallus

By: _____
James E. Brown
Attorneys for Petitioners

CERTIFICATION OF COMPLAINCE

Pursuant to Rule 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that the foregoing is proportionally spaced using 14 point font; is double spaced, and the word count calculated by WordPerfect/Microsoft Word for Windows is under 4,000 excluding tables, captions and summaries.

_____
Chris J. Gallus

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of July, 2012, a true copy of the foregoing was served as follows:

Linda McCulloch
Montana Secretary of State
State Capitol Building
1301 E. 6th Avenue
Helena, MT 59601

☐ E-Mail
☒ Hand Delivered
☐ First Class Mail
☐ Overnight

Attorney General Steve Bullock
Department of Justice
P.O. Box 201401
Helena, MT 59620-1401

☐ E-Mail
☒ Hand Delivered
☐ First Class Mail
☐ Overnight

_____
Chris J. Gallus, Attorney at Law

Exhibit 1

PETITION TO PLACE INITIATIVE NO. I-166 ON THE ELECTION BALLOT

Subject to applicable laws and deadlines, if 5% of the voters in each of 34 legislative representative districts sign this petition and the total number of voters signing this petition is 24,337, this initiative will appear on the next general election ballot. If a majority of voters vote for this initiative at that election, it will become law.

We, the undersigned Montana voters, propose that the secretary of state place the following initiative on the November 6, 2012, general election ballot:

Statement of Purpose:

Ballot initiative I-166 establishes a state policy that corporations are not entitled to constitutional rights because they are not human beings, and charges Montana elected and appointed officials, state and federal, to implement that policy. With this policy, the people of Montana establish that there should be a level playing field in campaign spending, in part by prohibiting corporate campaign contributions and expenditures and by limiting political spending in elections. Further, Montana's congressional delegation is charged with proposing a joint resolution offering an amendment to the United States Constitution establishing that corporations are not human beings entitled to constitutional rights.

[] FOR charging Montana elected and appointed officials, state and federal, with implementing a policy that corporations are not human beings with constitutional rights.

[] AGAINST charging Montana elected and appointed officials, state and federal, with implementing a policy that corporations are not human beings with constitutional rights.

Voters are urged to read the complete text of the initiative, which appears on the reverse side of this sheet. A signature on this petition is only to put the initiative on the ballot and does not necessarily mean the signer agrees with the initiative.

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration card or the signature will not be counted.

Signature	Date Signed	Residence Address or Post-Office Address or Home Telephone Number	Printed Last Name and First and Middle Initials	For County Election Office Use Only: Legis. Rep. Dist. Number	For County Election Office Use Only: Rsrvd
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

Sponsor's Instructions to Signature Gatherers: (1) you must be a Montana resident; (2) collect voters' signatures from only one county per sheet; (3) always have a complete copy of I-166 on the reverse side; (4) each petition (or section of up to 25 sheets) must have an affidavit signed by you after you gather the signatures that you attach and you must have another person notarize each affidavit; and (5) please return this petition, even if not completely full, not later than June 18, 2012, to Stand with Montanans, P.O. Box 153, Helena, MT 59624. After then, please mail the petitions to the applicable county election administrator – addresses are available online at the following: http://sos.mt.gov. Signed petition sheets are due to counties by 5:00 p.m. on June 22, 2012.

PETITION # COUNTY: _____ Initials of Petitioner for Signatures on This Page: _____

THE COMPLETE TEXT OF INITIATIVE NO. 166 (I-166)

BE IT ENACTED BY THE PEOPLE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 4] may be cited as the "Prohibition on Corporate Contributions and Expenditures in Montana Elections Act."

NEW SECTION. **Section 2. Preamble.** The people of the state of Montana find that:

(1) since 1912, through passage of the Corrupt Practices Act by initiative, Montana has prohibited corporate contributions to and expenditures on candidate elections;

(2) in 1996, by passage of Initiative No. 125, Montana prohibited corporations from using corporate funds to make contributions to or expenditures on ballot issue campaigns;

(3) Montana's 1996 prohibition on corporate contributions to ballot issue campaigns was invalidated by *Montana Chamber of Commerce v. Argenbright*, 226 F.3d 1049 (2000). Montana's 1912 prohibition on corporate contributions to and expenditures on candidate elections is also being challenged under the holding of *Citizens United v. FEC*, 558 U.S. _____, 130 S.Ct. 876 (2010). This decision equated the political speech rights of corporations with those of human beings.

(4) in 2011 the Montana Supreme Court, in its decision, *Western Tradition Partnership, Inc. v. Attorney General,* 2011 MT 328, upheld Montana's 1912 prohibition on corporate contributions to and expenditures on candidate campaigns, stating in its opinion as follows:

(a) examples of well-financed corruption involving corporate money abound in Montana;

(b) the corporate power that can be exerted with unlimited corporate political spending is still a vital interest to the people of Montana;

(c) corporate independent spending on Montana ballot issues has far exceeded spending from other sources;

(d) unlimited corporate money into candidate elections would irrevocably change the dynamic of local Montana political office races;

(e) with the infusion of unlimited corporate money in support of or opposition to a targeted candidate, the average citizen candidate in Montana would be unable to compete against the corporate-sponsored candidate, and Montana citizens, who for over 100 years have made their modest election contributions meaningfully count, would be effectively shut out of the process; and

(f) clearly the impact of unlimited corporate donations creates a dominating impact on the Montana political process and inevitably minimizes the impact of individual Montana citizens.

NEW SECTION. **Section 3. Policy.** (1) It is policy of the state of Montana that each elected and appointed official in Montana, whether acting on a state or federal level, advance the philosophy that corporations are not human beings with constitutional rights and that each such elected and appointed official is charged to act to prohibit, whenever possible, corporations from making contributions to or expenditures on the campaigns of candidates or ballot issues. As part of this policy, each such elected and appointed official in Montana is charged to promote actions that accomplish a level playing field in election spending.

(2) When carrying out the policy under subsection (1), Montana's elected and appointed officials are generally directed as follows:

(a) that the people of Montana regard money as property, not speech;

(b) that the people of Montana regard the rights under the United States Constitution as rights of human beings, not rights of corporations;

(c) that the people of Montana regard the immense aggregation of wealth that is accumulated by corporations using advantages provided by the government to be corrosive and distorting when used to advance the political interests of corporations;

(d) that the people of Montana intend that there should be a level playing field in campaign spending that allows all individuals, regardless of wealth, to express their views to one another and their government; and

(e) that the people of Montana intend that a level playing field in campaign spending includes limits on overall campaign expenditures and limits on large contributions to or expenditures for the benefit of any campaign by any source, including corporations, individuals, or political committees.

NEW SECTION. **Section 4. Promotion of policy by elected or appointed officials.**

(1) Montana's congressional delegation is charged with proposing a joint resolution offering an amendment to the United States constitution that accomplishes the following:

(a) overturns the U.S. Supreme Court's ruling in *Citizens United v. Federal Election Commission;*

(b) establishes that corporations are not human beings with constitutional rights;

(c) establishes that campaign contributions or expenditures by corporations, whether to candidates or ballot issues, may be prohibited by a political body at any level of government; and

(d) accomplishes the goals of Montanans in achieving a level playing field in election spending.

(2) Montana's congressional delegation is charged to work diligently to bring such a joint resolution to a vote and passage, including use of discharge petitions, cloture, and every other procedural method to secure a vote and passage.

(3) The members of the Montana legislature, if given the opportunity, are charged with ratifying any amendment to the United States constitution that is consistent with the policy of the state of Montana.

NEW SECTION. **Section 5. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act.]

NEW SECTION. **Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 7. Effective date.** [This act] is effective upon approval by the electorate.

NEW SECTION. **Section 8. Codification instruction.** Sections [1 through 4] are intended to be codified as an integral part of Title 13 and the provisions of Title 13 apply to sections [1 through 4].

Exhibit 2

ATTORNEY GENERAL
STATE OF MONTANA

Joseph P. Mazurek
Attorney General

Department of Justice
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

March 23, 1994

The Honorable Mike Cooney
Secretary of State
State Capitol
P.O. Box 202801
Helena, MT 59620-2801

Dear Mr. Cooney:

In accordance with Mont. Code Ann. §§ 13-27-202 and -312, this office has reviewed the petition for initiative calling for the resignation of United States Senator Max Baucus on December 1, 1994. For reasons that follow, the petition is rejected.

The power of initiative and referendum is reserved to the people by Article III, sections 4 and 5 of the Montana Constitution. Section 4(1) provides: "The people may enact laws by initiative on all matters except appropriations of money and local or special laws." While the initiative power is broadly construed to maintain the maximum power in the people, it is not without limits. State ex rel. Harper v. Waltermire, 213 Mont. 425, 429, 691 P.2d 826, 829 (1984). "The initiative process in the Montana Constitution was designed to enact *laws*, . . . *state constitutional amendments*, . . . and to initiate a call for a *state constitutional convention*[.] . . . The initiative power within the Montana Constitution does not include the power to enact a legislative resolution[.]" Id. at 428, 691 P.2d at 829 (emphasis in original).

The operative language for purposes of my review of the instant petition is the word "laws" in Section 4. "*Law* is a solemn expression of the will of the supreme power of the state and is expressed (1) by the Constitution and (2) by the statutes." State ex rel. Burns v. Lacklen, 129 Mont. 243, 254, 284 P.2d 998, 1004 (1955) (emphasis in original). As distinguished from law, a resolution is "merely the form in which a legislative body expresses a determination or directs a particular action. An ordinance [or law] prescribes a permanent rule for conduct of government, while a resolution is of special or temporary character." State ex rel. Easbey v. Highway Patrol Board, 140 Mont. 383, 411, 372 P.2d 930, 945 (1962) (citation omitted).

Other courts have described the distinction in similar terms. "Generally, it may be said that a legislative body uses a resolution to express an opinion or purpose with respect to a given matter or thing and it is temporary in nature, while a law is intended to direct and control permanently matters applying to persons and things in general." State ex rel. Jones v. Atterbury, 300 S.W.2d 806, 817 (Mo. 1957) (citing cases). Quoting Blackstone's Commentaries, the Maine Supreme Court defined "law" as "a rule of civil conduct prescribed by the supreme power in a state, commanding what is right and prohibiting what is wrong, ... [a]nd, first, it is a rule: not a transient sudden order from a superior to or concerning a particular person; but something permanent, uniform, and universal." City of Bangor v. Inhabitants of Etna, 34 A.2d 205, 208 (Me. 1943). "'It is frequently said that the distinction between bills and resolutions is that resolutions are not law. As a generalization this is probably accurate, if by 'law' is meant those legislative actions which operate on all persons in society, and must be enforced by the executive department, and sustained by the judiciary.'" American Federation of Labor-Congress of Indust. Orgs. v. Eu, 686 P.2d 609, 624 (Cal. 1984) (quoting 1A Sutherland, Statutory Construction (Sands rev. ed. 1972) p. 335)).

To qualify for submission to the voters, an initiative must propose to enact a law. Art. III, sec. 4, Mont. Const.; Harper, 213 Mont. at 428-29, 691 P.2d at 828-29. An initiative which "seeks to do something other than enact a statute--which seeks to render an administrative decision, adjudicate a dispute, or declare by resolution the views of the resolving body--is not within the initiative power reserved by the people." Eu, 686 P.2d at 627. If a proposed ballot measure exceeds the initiative power reserved by the state constitution, the petition must be rejected. See White v. Welling, 57 P.2d 703, 705-06 (Utah 1936); State ex rel. Fidanque v. Paulus, 688 P.2d 1303, 1306-07 and n.5 (Or. 1984) (secretary of state has initial duty to determine whether use of the initiative power in each case is authorized by the constitution). See also 45 Op. Att'y Gen. No. 5 (1993) (county election administrator, upon advice of county attorney, may reject a sample initiative petition where it does not involve a matter subject to the initiative or referendum process); 41 Op. Att'y Gen. No. 55 at 226 (1986) (secretary of state should not certify for primary election ballot the name of an individual who cannot possibly meet eligibility requirements for the office).

I find that the petition submitted for my review does not purport to enact a law within the meaning of Art. III, sec. 4 of the Montana Constitution. It is a temporary measure only, singles out a particular individual and a particular date, does not prescribe a regulation or rule of conduct, or impose a duty or confer a right, and has no general application. Quite simply, it does not enact legislation. Rather, it is "a transient amendment for a specialized purpose" (Harper, 213 Mont. at 328, 691 P.2d at 828), and--like a resolution--serves only to express an opinion or view of the resolving body.

While I am quite cognizant of the protection to which the initiative power is entitled under our constitution, I am duty bound to reject a measure which exceeds constitutional authorization. As stated by the California Supreme Court in Eu, "[the initiative] is not a public opinion poll. It is a method of enacting legislation, and if the proposed measure does not enact legislation, ... it should not be on the ballot." 686 P.2d at 613-14.

Accordingly, I reject the petition calling for Senator Max Baucus to resign on December 1, 1994, and recommend that you also reject the measure for the reasons I have stated.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/jkd