BARBARA WONG
EXECUTIVE DIRECTOR

PHONE: (808) 586-0285
FAX: (808) 586-0288
www.hawaii.gov/campaign

**STATE OF HAWAII**
**CAMPAIGN SPENDING COMMISSION**
235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

February 13, 2009

TO: The Honorable Jon Riki Karamatsu, Chair of the House Judiciary Committee
The Honorable Ken Ito, Vice-Chair of the House Judiciary Committee
Members of the House Judiciary Committee

FROM: Barbara U. Wong, Executive Director
Campaign Spending Commission

**SUBJECT: Testimony on H.B. No. 345, Relating to Campaign Financing**[1]

February 13, 2009
2:05 p.m. in Conference Room 325

Chair Karamatsu, Vice-Chair Ito, and Members of the House Judiciary Committee, thank you for the opportunity to testify on this bill.

Act 244, SLH 2008 ("Act 244") established a pilot project for comprehensive public funding program for the county of Hawaii council elections. The pilot project is for a period of three election cycles, and scheduled to begin with the 2010 elections.

H.B. No. 345 proposes to defer the pilot project for three election cycles until the 2014 elections.

- The Campaign Spending Commission ("Commission") is not opposed to this bill, which was not introduced at the Commission's request.
- The Committee may also want to consider removing the equalizing fund provisions in Act 244.

The Commission's staff is well into planning for the start of the pilot project for comprehensive public funding program. Nevertheless, the deferral proposed in H.B. No. 345 would provide additional time for the staff to identify issues and address those issues relating to this new program and focus on other priorities (2010 is a gubernatorial election year).

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[1] This bill was referred to this Committee and the House Committee on Finance.

There does not appear to be a Senate companion bill.

## I. Additional duties resulting from Act 244

The additional duties and responsibilities resulting from the comprehensive public funding program will require the hiring of new staff or the existing staff will be responsible for administering the program. Generally, this program will require the development of manuals, forms and procedures; modifying the electronic candidate filing system; training the exiting staff and new staff (if any); and educating candidates.

More specifically, we have identified the following requirements:

1. All qualifying contributions shall be deposited in the Hawaii Election campaign fund. This may result in the preparation and mailing of thousands of receipts.
2. The application for certification must have 200 signatures and addresses which must be reviewed and verified by the County Clerk of Hawaii.
3. The Commission must make a decision to certify within five business days of receiving an application.
4. Seed money is limited to $3,000. These amounts will have to be tracked.
5. Surplus campaign funds may be used for seed money and limited in-office communications. Other uses are prohibited and separate reports will have to be filed if a candidate has surplus funds. Surplus funds will have to be tracked.
6. The Commission must post on its website, beginning on January 1 in the election year, monthly reports stating, by district the number of declarations of intent to seek public financing received, the number of applications received, the number of candidates certified for public funds, the base amount certified for each candidate, and the amount available for additional certified candidates.
7. Equalizing funds must be disbursed when a nonparticipating candidate's expenditures and independent expenditures supporting the nonparticipating candidate or opposing the certified candidate exceed the base amounts allotted to the participating candidate. The Commission, therefore, would track and investigate all independent expenditures of all committees and individuals that support the nonparticipating candidates.
8. Equalizing funds must be disbursed within 24 hours; the processing must be done immediately without sufficient time to verify information that is provided. This also impacts on the Department of Accounting and General Services, who must disburse the funds.
9. To implement the initial excess report, the Commission will have to develop a new report form and business requirements for modifications to the electronic filing system. When filed, the Commission must review these new reports, send appropriate letters where required, track responses, and investigate for violations.
10. To implement the supplemental excess reports, the Commission will have to develop a new report form for the electronic filing system, review these new reports, send appropriate letters where required, track responses, and investigate for violations.

11. To implement the independent expenditure report, the Commission will have to develop a new report form for the electronic filing system, review these new reports, send appropriate letters where required, track responses, and investigate for violations.
12. To implement the supplemental independent expenditure report, the Commission will have to develop a new report form for the electronic filing system, review these new reports, send appropriate letters where required, track responses, and investigate for violations.
13. Within 24 hours of verifying the failure to file a report, or falsity of report, the Commission shall automatically disburse equalizing funds.
14. The Commission must conduct investigations of failure to file a report and false reports.
15. The Commission should adopt rules to compute the equalizing funds and then compute all funds.
16. The Commission must hire, train and supervise an auditor and systems analyst; create new reports and integrate the reports into the online filing system; and purchase equipment for the new staff members; and locate additional office space.
17. The Commission must hire, train and supervise an employee to administer the public funding program; create an online filing system; and purchase equipment for the administrator.
18. The Commission must create all forms and receipts, create a candidate's guide, and provide training classes.
19. The Commission must establish an independent, nonpartisan review committee for the comprehensive public funding program; and provide administrative and staff support to the committee.
20. The Commission must develop a comprehensive report for the legislature on the comprehensive public funding program.

## II. Operation of Act 244

Act 244 entitles a candidate for the county of Hawaii council elections who is "certified" by the Commission to receive:

- The base amount of funds; and
- "Equalizing funds."

The Commission, however, "shall not distribute comprehensive public funding to certified candidates that exceeds the total amount of $300,000 for all candidates subject to this Act in any given election year in which this Act is operative."[2]

[2] Act 244, Section 12 (a).

Based upon preliminary calculations, the base amount of funds and equalizing funds that would be available to candidates for election to the county of Hawaii council in 2010 (if H.B. No. 345 does not pass) is set forth in the following table:

| | **Primary base funds** | **General base funds** | **Base funds in primary and general** | **Equalizing Funds in primary and general** | **Two candidates w/ equalizing funds** |
|---|---|---|---|---|---|
| District 1 | $7,159 | $788 | $7,947 | $15,894 | $31,788 |
| District 2 | $19,669 | $2,769 | $22,438 | $44,876 | $89,752 |
| District 3 | $23,016 | $546 | $23,562 | $47,124 | $94,248 |
| District 4 | $37,479 | $7,746 | $45,225 | $90,450 | $180,900 |
| District 5 | $9,826 | $6,619 | $16,445 | $32,890 | $65,780 |
| District 6 | $37,795 | $455 | $38,250 | $76,500 | $153,000 |
| District 7 | $14,363 | $6,218 | $20,581 | $41,162 | $82,324 |
| District 8 | $752 | $220 | $972 | $1,944 | $3,888 |
| District 9 | $14,206 | $484 | $14,690 | $29,380 | $58,760 |
| **Total** | $164,265 | $25,845 | $190,110 (if one candidate in each race in the primary and general election) | $380,220 (if one candidate in each race in the primary and general election; all candidates receive maximum equalizing funds) | $760,440 (if two candidates in each race in the primary and general election; all candidates receive maximum equalizing funds) |

## A. Base amount

The base amount in a contested primary election is the "average of the amount spent by winning candidates in the previous two county council primary elections of the same district, reduced by ten per cent."

The base amount in a contested general election is the "average of the amount spent by winning candidates in the previous two county council general elections for the same district, reduced by ten per cent."[3]

[3] Act 244, Section 12(c), (d).

The base amount in an uncontested primary election is "thirty percent of the amount provided in a contested election;" no funding is provided in an uncontested general election.[4]

If "the revenues are insufficient to meet distributions to certified candidates under this section or $300,000 is distributed, the commission shall permit certified candidates to accept and spend contributions, subject to the campaign contribution limitations set forth in section 11-204, Hawaii Revised Statutes, up to the applicable amounts, including equalizing funds the certified candidate would have received from comprehensive public funding."[5]

### B. Equalizing funds

Equalizing funds "means additional public funds released by the commission to a comprehensive publicly funded candidate to allow the publicly funded candidate to stay financially competitive with a nonparticipating candidate in a contested election and to penalize a nonparticipating candidate for filing false or late reports."[6]

If a certified candidate is "outspent by an opposing nonparticipating candidate," the certified candidate may receive equalizing funds up to the base amount allotted to the candidate and subject to the $300,000 expenditure cap for all candidates. Equalizing funds are available in increments of 25% of the base amount.

A certified candidate is outspent if the base amount is exceeded by the aggregate of the following:

- The nonparticipating candidate's committee's expenditures or contributions, whichever is greater,
- Added to any independent expenditures made in support of that nonparticipating candidate or against the opposing certified candidate reported by any person,
- Minus any independent expenditures made in support of the certified candidate or against the nonparticipating candidate reported by any person.[7]

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[4] Act 244, Section 12(e).

[5] Act 244, Section 12(b).

[6] Act 244, Section 2.

[7] Act 244, Section 13(b).

In order to determine whether a certified candidate is outspent, Act 244 requires that additional reports not required under the current law be filed by a nonparticipating candidate and any other person making independent expenditures.

- Beginning forty-five days before the primary election day, a nonparticipating candidate shall file an initial excess report with the commission within twenty-four hours after aggregate contributions are received, or expenditures are made in an election that exceeds one hundred one per cent of the base amount of comprehensive public funding allotted to an opposing certified candidate in a contested election. Supplemental excess reports must be filed within twenty-four hours after the nonparticipating candidate's aggregate expenditures exceed $1,000 since the filing of the prior report.[8]
- Beginning forty-five days before the general election day, noncandidate committees and any other persons that make independent expenditures that expressly advocate the nomination, election, or defeat of a certified candidate shall file the initial independent expenditure report with the commission within twenty four hours after expenditures exceed $1,000 in aggregate in an election. Supplemental independent expenditure reports must be filed within twenty-four hours after the aggregate expenditures exceed $1,000 since the filing of the prior report. The independent expenditure reports shall identify the nonparticipating candidate or certified candidate for whom the independent expenditure is intended to influence the nomination, election, or defeat.[9]

If a nonparticipating candidate fails to file a timely initial excess report or supplemental excess report in a contested election or files a false excess report or supplemental excess reports, the commission, within twenty-four hours of verifying the failure or falsity, shall inform the comptroller. The comptroller then must pay to the certified candidate equalizing funds equivalent to the base amount, subject to the $300,000 expenditure cap.

## III. Remove equalizing fund provisions

Notwithstanding the complexities in the law discussed above, the Commission is recommending removal of the equalizing fund provisions based upon In re McComish v. Brewer, No. 2:08-cv-1550, Order (Aug. 29, 2008). The Court, therein, determined that Arizona's equalizing fund provision "violates the First Amendment of the U.S. Constitution." A copy of the Order is attached to our testimony. The Commission submits that the Legislature should take proactive action, rather than passively await possible litigation involving equalizing funds.

The foundation for the Order by the McComish Court is the United State Supreme Court's decision in Davis v. Fed. Election Comm., 128 S.Ct. 2759 (2008). Under federal

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[8] Act 244, Section 14(a)(1).

[9] Act 244, Section 14(a)(2).

law, candidates for the U.S. House of Representatives are subject to a $2,300 per election contribution limit, as well as a limit on coordinated party expenditures (i.e., expenditures made by a political party in coordination with the candidate benefiting from the expenditure).

When a candidate for the U.S. House of Representatives spent personal funds in excess of $350,000, as explained by the Davis Court, "a new, asymmetrical regulatory scheme [came] into play." The self-financing candidate remained subject to the original $2,300 contribution limit and coordinated spending limit, while a non-self-financing opponent was permitted to receive contributions up to treble the original limit (i.e., $6,900 rather than $2,300) and the coordinated party spending limit was eliminated. The Court found that the asymmetry of this arrangement "impermissibly burden[ed] [the plantiff's] First amendment right to spend his own money for campaign speech." Davis at 2771.

Attachment (Order, In re McComish v. Brewer, No. 2:08-cv-1550)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

John McComish, et al.,

Plaintiffs,

vs.

Jan Brewer, et al.,

Defendants.

No. CV-08-1550-PHX-ROS

**ORDER**

Before the Court is Plaintiffs' Motion for a Temporary Restraining Order ("TRO") (Doc. 13). Plaintiffs seek to enjoin enforcement of the matching funds provisions of Arizona's Clean Elections Act, A.R.S. § 16-952 (A), (B) and (C), asserting that these provisions impermissibly burden their First Amendment rights to freedom of speech.

For the reasons below, Plaintiffs' requested relief will be denied.

## BACKGROUND

The Arizona Clean Elections Act (the "Act" or "Arizona Act") was approved by Arizona voters in 1998. The Act sets up a voluntary system of campaign financing in which candidates who choose to be "participating candidates" may receive funds from the Citizens Clean Elections Fund ("CCEF"). Participating candidates are limited in the campaign contributions they may receive and personal expenditures they may make. In return, they

receive campaign funds from the CCEF in a set amount.[1] See A.R.S. §§ 16-941, -945; see also, Citizen Clean Elections Commission, "Voter Education Guide" (2008) *available at* http://www.ccec.state.az.us/ccecweb/ccecays/ccecPDF.asp?docPath=docs/2008PrimaryCandidateStatementPamphlet.pdf (hereafter "Voter's Guide").

When participating candidates have opponents who are non-participating – "traditional candidates" – they can also receive matching funds. Once a traditional candidate exceeds the spending limit for a given race, her participating opponent or opponents will receive dollar-for-dollar matching funds from the CCEF. These funds cap out at three times the applicable spending limit.[2] Independent expenditures by Political Action Committees ("PACs") made on behalf of a traditional candidate or in opposition to her participating opponent also count towards the spending limit.

Plaintiffs here are non-participating candidates. Plaintiff John McComish is the current Arizona State House of Representatives Majority Whip, currently running for re-election. Plaintiff Nancy McLain is a current member of the Arizona State House of Representatives, currently running for re-election. Plaintiffs Doug Sposito, Frank Antenori, and Tony Bouie are candidates for the Arizona State House of Representatives. Plaintiff Kevin Gibbons is a candidate for the Arizona State Senate. Gibbons, Sposito, and Bouie have recently triggered matching funds to their opposing "participating" candidates by making direct expenditures to their campaign. See Gibbons Aff., ¶ 12, Ex. A.1; Bouie Aff., ¶ 9, Ex. B.1; Sposito Aff., ¶ 11, Ex. C.1.. Further, all three report that their campaign

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[1] For candidates for the state legislature, primary spending limits are $12,921 and general election spending limits are $19,382. Legislative candidates may collect up to $3,230 in individual early contributions of no more than $130 during the exploratory and qualifying periods, and may use $610 of personal monies for their campaigns. For candidates for Corporation Commission, the primary spending limit is $82,680 and the general election spending limit, $124,020. Candidates may collect up to $12,920 in early contributions of no more than $130 and contribute $1,230 of their personal monies. See A.R.S. § 16-951; Voter's Guide.

[2] The matching funds are a dollar-for-dollar match minus 6% meant to compensate for the fundraising expenses incurred by traditional candidates. A.R.S. § 16-952(A).

expenditures have been chilled because of the possibility of triggering further matching funds to their opponents, making them reluctant to spend money they would otherwise have used to fund campaign activities. See Sposito Aff., ¶ 12; Gibbons Aff., ¶ 10-11; Bouie Aff., ¶ 8-10.

The Act's provision can be manipulated in a number of ways. Because PACs may make expenditures on behalf of traditional candidates without their consent or even their knowledge, they may air ineffective - even deliberately ineffective - advertising that then triggers matching funds that participating opponents can use at their discretion. The occurrence of this was alluded to at the hearing for a TRO. Similarly, candidates may use a "slate" strategy against their opponents. Bouie provides an illustrative example arising out of his district where a traditional incumbent, Representative Sam Crump, and a participating challenger, Carl Seel, running in his district (where two seats are available) have emerged as a "slate," sharing joint advertising. Bouie Aff., ¶ 21-23, Ex. B.2. Thus, money spent by Crump generates matching funds for Seel, effectively aiding both candidates.

## ANALYSIS

### I. Standard

The standard for issuing a Temporary Restraining Order ("TRO") is the same as that for issuing a preliminary injunction. Gonzalez v. State, 435 F. Supp. 2d 997, 999 (D. Ariz. 2006). In the Ninth Circuit, there are two sets of criteria for a court to use when evaluating a request for a TRO. First, a plaintiff must show:

> (1) a strong likelihood of success on the merits,
> (2) the possibility of irreparable injury to plaintiff if preliminary relief is not granted,
> (3) a balance of hardships favoring the plaintiff, and
> (4) advancement of the public interest (in certain cases).

Earth Island Inst. v. U.S. Forest Serv., 351 F.3d 1291 (9th Cir. 2003) (quoting Johnson v. Cal. State Bd. Of Accountancy, 72 F.3d 1427, 1430 (9th Cir. 1995). Alternately, a plaintiff may "demonstrate[] '*either* a combination of probable success on the merits and the possibility of irreparable injury *or* that serious questions are raised and the balance of hardships tips sharply in his favor'" Id. These two tests represent a continuum; "[t]hus, the greater the relative

hardship to [Plaintiffs] the less probability of success must be shown." Earth Island, 351 F.3d at 1298.

**II. Application**

a. Likelihood of Success on the Merits.

The history of campaign finance jurisprudence is extensive and convoluted. In Buckley v. Valeo, 424 U.S. 1 (1976), the Supreme Court rejected a cap on expenditures by candidates of their personal funds. The Court explained that a "candidate . . . has a First Amendment right to engage in the discussion of public issues and vigorously and tirelessly to advocate his own election," and that a cap on personal expenditures by a candidate constitutes "a substantial," "clea[r]," and "direc[t] restraint on that right." Id. at 52. Thus, while states may place certain reasonable limits on campaign *contributions*, personal expenditures may not be restrained. Id. at 21-22, 51.

Less clear, however, has been the fate of statutes like Arizona's which, rather than placing a direct cap on personal expenditures, instead create a system that incentivizes – or, perhaps, coerces – candidates to opt into a public financing program that includes limits on contributions *and* personal expenditures. Several circuits have considered this variation to the statute in *Buckley*. The First, Fourth and Sixth Circuits have ruled such schemes constitutional. In N.C. Right to Life, Inc. v. Leake, 524 F.3d 427 (4th Cir. 2008), the court held an act similar to Arizona's was constitutional. "The plaintiffs remain free to raise and spend as much money, and engage in as much political speech, as they desire," wrote the court. "They will not be jailed, fined, or censured if they exceed the trigger amounts." Similarly, the First Circuit, in Daggett v. Comm'n on Governmental Ethics & Election Practices, 205 F.3d 445 (1st Cir. 2000), held that Maine's matching fund provision was constitutional, writing that "[t]he public funding system in no way limits the quantity of speech one can engage in or the amount of money one can spend engaging in political speech, nor does it threaten censure or penalty for such expenditures." Id. at 464; see also Gable v. Patton, 142 F.3d 940 (6th Cir. 1998) (holding that a Kentucky campaign finance law which

lifted expenditure limits for participating candidates when non-participating candidates exceeded those limits was constitutional).

Of the circuits that have considered the question, only the Eighth Circuit has found matching fund provisions like those in the Arizona Act to be unconstitutional. In Day v. Holahan, 34 F.3d 1356 (8th Cir. 1994), a Minnesota law provided that candidates would receive one half the amount of independent expenditures made by opposing candidates. The court emphasized the "'self-censorship' that has occurred even before the state implements the statute's mandates," "no less a burden on speech that is susceptible to constitutional challenge than is direct government censorship." Id. at 1360. The court also found that the speech restriction could not be considered content neutral; "[i]ndependent expenditures of any other nature, supporting the expression of any sentiment other than advocating the defeat of one candidate or the election of another, do not trigger the statute's . . . provisions." Id. at 1361. There was, however, one substantial difference between the statute at issue in Day and the Arizona Act. In Minnesota, the participation rate among candidates was approaching 100% (in Arizona, it is closer to 60%), leading the court to declare that "no interest, no matter how compelling, could be served" by the restrictions on the remaining candidates. Id.

For all that these cases have long muddied the matching funds landscape, a recent Supreme Court decision sheds light upon the issue. In Davis v. Fed. Election Comm'n., 128 S. Ct. 2759 (2008), the Court quoted from Day extensively and affirmatively, while ignoring the conflicting opinions entirely. See id. at 2772. Ultimately, the Court found that provisions of the Bipartisan Campaign Reform Act of 2002 ("BCRA") – the so-called Millionaire's Amendment – violated the Constitution's First Amendment free speech protections. 2 U.S.C. §441a-1(a); id. at 2774. The Millionaire's Amendment was triggered when a non-participating candidate's personal expenditures caused her total campaign expenditures to exceed $350,000. At that point, an opposing participating candidate was allowed to receive individual contributions at three times the normal limit (the limit for non-participating candidates remained the same), and could accept coordinated party expenditures without limit. Id. at 2766. The Court found that the asymmetry of this arrangement "impermissibly

burden[ed] [the plaintiff's] First Amendment right to spend his own money for campaign speech." Id. at 2771. Thus, although under the BCRA candidates can choose to spend their own money as desired, they "must shoulder a special and potentially significant burden if they make that choice." Davis, 128 S.Ct. at 2771.

Because the BCRA "impose[d] a substantial burden on the exercise of the First Amendment right to use personal funds for campaign speech, the provision [could] not stand unless it [was] 'justified by a compelling state interest.'" Id. at 2772. The Court found that the government's stated interest of "level[ing] electoral opportunities for candidates of different personal wealth" was not a compelling state interest. Id. at 2773. "[P]reventing corruption or the appearance of corruption" *are* legitimate. Id. However, it did not find that the BCRA was justified by such an interest; "reliance on personal funds *reduces* the threat of corruption, and therefore [the challenged provision], by discouraging use of personal funds, disserves the anticorruption interest." Id. (emphasis in original).

The law at issue in Davis differs from the Arizona Act in that the latter does not inequitably raise the contributions limit, instead providing matching funds from the CCEF. The Defendants point to this in their brief, quoting the Supreme Court's statement that "we have never upheld the constitutionality of a law that imposes different contribution limits for candidates who are competing against each other . . . ." Id. Thus, Defendants argue, "[t]he Act here imposes no asymmetrical burden on a traditional candidate's ability to contribute or expend his or her own money."

However, the Davis court focuses not merely on the fact that the contributions limit differs for participating and non-participating candidates, but also forcefully on the fact that "the vigorous exercise of the right to use personal funds to finance campaign speech produces fundraising advantages for opponents in the competitive context of electoral politics." Id. at 2772. Likewise, the Supreme Court has held (in a passage quoted approvingly in Davis) that, while one does not "have the right to be free from vigorous debate, one "*does* have the right to be free from government restrictions that abridge its own rights in order to 'enhance the relative voice' of its opponents." Pacific Gas & Elec. Co. v. Pub. Utilities Comm'n., 475 U.S.

1, 14 (1986) (emphasis in original). The "statutorily imposed choice" provided by the BCRA was not sufficient to save its constitutionality. Davis, 128 S. Ct. at 2772. Though the Arizona Act's mechanism for funding differs, the effect, which forces a candidate to choose to "abide by a limit on personal expenditures" or else endure a burden placed on that right, is substantially the same. Id.

It is in the presence of a compelling state interest that the Arizona Act has the potential to most sharply distinguish itself from the BCRA. The Arizona Act perhaps better serves the interest of discouraging corruption; it provides matching funds for – and thus discourages – private contribution. However, as Plaintiffs point out, the Act opens up new avenues for possible corruption. Because matching funds will be provided to participating candidates for expenditures that PACs make on behalf of traditional candidates, PACs can run ineffective, unwished for advertising that generates funds for the participating candidate to use at her discretion. The Act also allows the unofficial "slate" strategy seen in Bouie's race, which allows traditional candidates to trigger matching funds that will be used partially in their own support. The possibility of such gamesmanship mitigates against any decrease in corruption or in the appearance of corruption. The Arizona Act cannot be found to serve this interest any more narrowly than did the BCRA.

Accordingly, Plaintiffs have established that the Matching Funds provision of the Act violates the First Amendment of the U.S. Constitution.

b. Irreparable Injury

Plaintiffs can be said to suffer irreparable injury both through the dispensation of funds that will be used to oppose them and through the mere fact that their speech is being burdened. The Supreme Court has held that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 427 U.S. 347, 373 (1976).

c. Balance of Harms and the Public Interest

The balance of harms at issue is not a simple one. On the one hand, Plaintiffs suffer a burden on their First Amendment rights and have proffered some evidence that the

candidates opposing them benefit directly from that opposition. On the other hand, the State Defendants have a clear interest in running a smooth and orderly election which, in this case, includes a significant number of candidates who have been operating under the assumption that matching funds would be distributed and planning their campaign strategies accordingly. Those disadvantaged candidates are not currently parties to this litigation, but disrupting their expectations of funding shortly before an election surely interferes with the State's interest in holding a fair, contested election. Furthermore, courts have traditionally treated injunctions in election cases differently than in other contexts, as "[i]n this case, hardship falls not only upon the putative defendant" but on all citizens of the state. Southwest Voter Registration Educ. Project v. Shelley, 344 F.3d 914, 919 (9th Cir. 2003). Certainly the fair nature of this election has been tainted by the constitutional violations with which it is entwined. However, as Defendants point out, "[c]hanging the rule now would irreparably harm the candidates who in good faith chose to accept public funding by participating in Arizona's Clean Elections program." Defendants provide affidavits from at least two candidates who state that they are relying on matching funds to run an effective campaign. Kelty Aff., ¶ 3-4; Valdez Aff., ¶ 4.

And the length of time Plaintiffs waited to file their TRO also weighs in the balance against the Plaintiffs on the public interest determination. Candidates began qualifying for clean elections funding after January 1, 2008, candidates were required to file nomination papers by June 4, 2008, and Davis was decided on June 27, 2008. While it appears Plaintiffs' counsel acted quickly upon learning of the case, the fact remains that Plaintiffs filed their complaint on August 21, 2008 and their Motion for Temporary Restraining Order was filed five days later on August 26, 2008. An Oregon district court decision noted the "eleventh-hour" nature of a challenge in denying a TRO in an election case as bearing against the public interest. Grudzinski v. Bradbury, 2007 WL 2733826, at *3 (D. Or. Sept. 12, 2007). Further the case law discussed previously addressing matching funds were not resolved in the context of a TRO or preliminary injunction..

The tardiness of the challenge has inhibited a thorough determination of the harms on each side. In order to accurately assess the balance of the harms, Plaintiffs need to present

further evidence of harm done to them through expenditures of matching funds *at this late stage of the election.* Defendants, similarly, need adequate time to develop and present evidence as to the disruptive effect enjoining matching funds will have at this stage of the election.

## CONCLUSION

Plaintiffs have shown success on the merits. However, given the special nature of an election and the seriousness of enjoining a critical facet of it at this stage in time, Plaintiffs have not shown that the balance of harms tilts in their favor.

Accordingly,

**IT IS ORDERED** Plaintiffs' Motion for a Temporary Restraining Order shall be **DENIED.**

**IT IS FURTHER ORDERED** a hearing will be held on September 3, 2008, 1:30 p.m. to determine whether a preliminary injunction should be granted or, should the parties decide that discovery is necessary, the preliminary injunction hearing will be continued and a status hearing will be held in its place.

DATED this 29th day of August, 2008.

Roslyn O. Silver
United States District Judge

KENNETH GOODENOW
*County Clerk*

*OFFICE OF THE COUNTY CLERK*

**Elections Division**
*County of Hawaii*
*Hawaii County Building*
*25 Aupuni Street*
*Hilo, Hawaii 96720*

TESTIMONY OF KENNETH GOODENOW,

COUNTY CLERK, COUNTY OF HAWAI'I,

TO THE HOUSE JUDICIARY COMMITTEE

ON HOUSE BILL NO. 345

RELATING TO CAMPAIGN SPENDING

February 13, 2009

Chair Karamatsu, Vice-Chair Ito, and members of the House Judiciary Committee, thank you for the opportunity to testify in support of House Bill No. 345.

The purpose of House Bill No. 345 is to delay the applicability of Act 244, Session Laws of Hawai'i 2008 (a pilot project for publicly funded campaigns for Hawai'i County Council) to the 2014, 2016, and 2018 general election years.

The "equalization funds" provision in the current law raises concerns regarding the constitutionality of this pilot project. In Day v. Holahan, 34 F.3d 1356 (8th Cir. 1994), a Minnesota law provided that candidates would receive one half the amount of independent expenditures made by opposing candidates. In finding this scheme unconstitutional, the court emphasized the "self-censorship" that resulted as: "no less a burden on speech that is susceptible to constitutional challenge than is direct government censorship." Id. at 1360. The United States Supreme Court in Davis v. Fed. Election Commission, 128 S.Ct. 2759 (2008) quoted from Day extensively in finding that provisions of the Bipartisan Campaign Reform Act of 2002 violated the First Amendment to the United States Constitution. In that case, the court concluded that the right to use personal funds to finance a campaign should not produce fundraising advantages for opponents in the competitive context of electoral politics. Id. at 2772. This is exactly at issue in the scheme provided for in Act 244, Session Laws of Hawai'i 2008. A candidate would obviously be discouraged from spending additional resources if it in fact meant that his or her opponent would benefit as a result. In my opinion the constitutionality of "equalization funds" is seriously at question and might impermissibly discourage a candidate from spending money for campaign speech, which in turn questions the fairness of the overall election process.

Thank you for the opportunity to testify on House Bill No. 345.

J YOSHIMOTO
*Council Member*
*District 3*

Phone: (808) 961-8272
FAX: (808) 961-8912
Email: jyoshimoto@co.hawaii.hi.us

# HAWAI'I COUNTY COUNCIL
## COUNTY OF HAWAI'I

TESTIMONY OF COUNCIL CHAIR J YOSHIMOTO,
HAWAI'I COUNTY COUNCIL
TO THE HOUSE JUDICIARY COMMITTEE
ON HOUSE BILL NO. 345
RELATING TO CAMPAIGN SPENDING

February 13, 2009

Chair Karamatsu, Vice-Chair Ito, and members of the House Judiciary Committee, thank you for the opportunity to testify in support of House Bill No. 345. I am testifying in my capacity as an individual Hawai'i County Council Member; the current County Council, as a body, has not taken any position on this matter.

The purpose of House Bill No. 345 is to delay the applicability of Act 244, Session Laws of Hawai'i 2008 (a pilot project for publicly funded campaigns for Hawai'i County Council) to the 2014, 2016, and 2018 general election years. While the previous Hawai'i County Council passed a resolution in favor of public funding for elections to the Hawai'i County Council, Act 244 raises a number of operational, policy and fiscal concerns that need to be addressed. At the very least, implementation of this program needs to be delayed.

I am primarily concerned with the "equalization funds" provided for in the current law. In Day v. Holahan, 34 F.3d 1356 (8th Cir. 1994), a Minnesota law provided that candidates would receive one half the amount of independent expenditures made by opposing candidates. In finding this scheme unconstitutional, the court emphasized the "self-censorship" that resulted as: "no less a burden on speech that is susceptible to constitutional challenge than is direct government censorship." Id. at 1360. The United States Supreme Court in Davis v. Fed. Election Commission, 128 S.Ct. 2759 (2008) quoted from Day extensively in finding that provisions of the Bipartisan Campaign Reform Act of 2002 violated the First Amendment to the United States Constitution. In that case, the court concluded that the right to use personal funds to finance a campaign should not produce fundraising advantages for opponents in the competitive context of electoral politics. Id. at 2772. In my opinion the constitutionality of "equalization funds" is seriously at question and might impermissibly discourage a candidate from spending money for campaign speech.

I am also very concerned about the fiscal implications of Act 244, Session Laws of Hawai'i 2008. Massachusetts and Kentucky have terminated full funding for their programs due to increased costs. The Hawai'i Campaign Spending Commission has stated that the Hawai'i fund would be bankrupt within the first year of a statewide program. Another concern is the potential for misuse of public funds. Emilie Boyles, a candidate for Portland's City Commission, was accused of improperly using public funds to pay her 16-year-old daughter $12,500 for campaign work (see the April 9, 2008 edition of the Seattle Weekly). In Arizona, a couple of college students qualified for public financing, then spent the money on extravagant parties and bar tabs (see the July 3, 2005 edition of the Scottsdale Tribune). Of course, misuse of public funds is punishable, but how to determine legitimate campaign expenditures for public money versus privately raised donations is not clear and may, unfortunately, lead to making criminals out of candidates.

If this pilot project is not delayed, it will very likely create disparities and funding disadvantages to those seeking to participate in the program. If the program were to take effect for the 2010 election cycle, a candidate for Council District 8 would have considerably fewer dollars available to them than a candidate running for Council District 6. Furthermore, if revenues are insufficient to meet distributions to all candidates, which is very likely, the resulting adaptation to the program is problematic.

It is also disputable as to whether public-financed campaigns have increased the number of candidates running for offices, impacted incumbent re-elections, increased voter turnout, or prevented out-of-state money from influencing local campaigns. A study of the Arizona publicly funded elections system by Allison Hayward, ("Campaign Promises: A Six-Year Review of Arizona's Experiment with Taxpayer-Funded Campaigns," 2006) concluded that the Arizona system actually reduced participation and confidence in government. According to that report, the number of primary candidates for office has decreased, the law has not increased minor or third-party participation, and incumbency reelection rates have not changed. A University of Missouri study ("Campaign Finance Laws and Political Efficacy: Evidence from the States," 2005) also concluded that public funding laws can have a statistically negative effect on public views of whether people have a say in their government.

Thank you for the opportunity to testify on House Bill No. 345.

# THE LEAGUE OF WOMEN VOTERS OF HAWAII

TESTIMONY ON HB 345 RELATING TO CAMPAIGN SPENDING

Committee on Judiciary
Friday, February 13, 2009
2:20 p.m.
Conference Room 325

Testifier: Jean Aoki, LWV Legislative Liaison

Chair Karamatsu, Vice-Chair Ken Ito, members of the House Committee on Judiciary,

The League of Women Voters of Hawaii strongly opposes HB 345 which would postpone the commencement of the pilot project for comprehensive public funding of Hawaii County Council elections from 2010 to 1014.

Increasingly, states and counties nation-wide, and even national leaders in Congress, the media, and non-profit organizations have come out in support of public funding for elections, in part to stop the escalating cost of elections which discourage too many well-qualified people from running for office.

In a report, the nonpartisan Center for Responsive Politics predicted that more than $5.3 billion will go toward financing the federal contests in November. They predicted that the presidential contest alone will cost nearly $2.4 billion. They reported that this is the first time that candidates for the White House have raised and spent over $1 billion dollars. This year's cost just for the presidency will be nearly double what was spent in 2004 and triple that spent in 2000.

Like it or not, all of us are paying for all of the money spent, not only through our own direct contributions, but indirectly paying for the contributions from major industries and corporations as they raise the prices of goods and services to pay for their own donations, and/or through the favored tax treatments, grants, etc. tucked into congressional legislation.

As long as we are paying for it, it behooves the public to supply the money directly to our candidates.

49 South Hotel Street, Room 314, Honolulu, Hawaii 986813 Ph. (808) 531-7448 Fax (808) 599-5669
Website: www.lwv-hawaii.com email: voters@lwv-hawaii.com

# THE LEAGUE OF WOMEN VOTERS OF HAWAII

We have finally, after ten years, a pilot project set to go which will enable us to evaluate the results, and make the necessary corrections and adjustments in the next few succeeding elections, and to then judge the outcome.

This bill gives no reason for postponing the commencement of this project. The supporters of this project are ready to inform the citizens of Hawaii County on how they can run for the County Council using public funds, and also helping the citizens of this county understand this project. If there is any good reason for the postponement, we should know about it.

We urgently ask the House Judiciary Committee to hold this bill in Committee.

Thank you for this opportunity to testify in opposition to HB 345.

49 South Hotel Street, Room 314, Honolulu, Hawaii 986813 Ph. (808) 531-7448 Fax (808) 599-5669
Website: www.lwv-hawaii.com email: voters@lwv-hawaii.com

ADA HAWAI'I
AMERICANS FOR DEMOCRATIC ACTION

OFFICERS

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Jim Olson
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George Simson
Bart Dame (Alt)

MAILING ADDRESS

PO. Box 61792
Honolulu,
Hawai'i 96822

February 12, 2009

TO: Representative John Riki Karamatsu, Chair; Representative Ken Ito, Vice-Chair
Members of the House Judiciary Committee

FROM: Barbara Polk, Legislative Committee Chair
Americans for Democratic Action, Hawaii Chapter

SUBJECT: OPPOSITION TO HB 345

Americans for Democratic Action, Hawaii Chapter, strongly opposes HB 345, which attempts to delay publicly, financed elections for the Hawaii County Council. The bill approving the test of public financing, at the request of the Hawaii County Council and with broad public support, was passed only last year. There is no reason to delay its implementation.

In States and communities where public financing is available to candidates, the result has been a broader representation of the public among political candidates, greater trust in government, and more active citizen participation—in other words, increased democracy. Public financing of election campaigns, on a voluntary basis, can go far to restore faith in our democracy in the State of Hawaii. To delay implementation is to delay these important advantages.

We strongly urge you to defeat this attempt to delay this important program.

Thank you for the opportunity to testify.

**Progressive Democrats of Hawai'i**
http://pd-hawaii.com
2457 Lamaku Pl, Honolulu, HI 96816
email: info@pd-hawaii.com
tel: 808.265.1334

February 2, 2009

Relating to HB 345
Testifying in Opposition
On Behalf of
The Progressive Democrats of Hawai'i

Dear Chair Karamatsu, Vice-Chair Ito, and Members of the House Judiciary Committee,

Mahalo for this opportunity to present testimony in strong opposition to House Bill 345 relating to Campaign Spending. My name is Josh Frost and I am the Co-Chair of the Progressive Democrats of Hawai'i (PDH). As the name of our organization suggests, PDH is made up of progressive minded individuals who share, among other things, a strong belief a democracy of, by, and for the people.

The passage of Act 244 was a great first step toward taking money out of the business of politics. The start date of 2010 for the implementation of this law was reasonable as it is the next election cycle following the implementation of this law. To postpone its implementation at all sends a signal to the supporters of this bill, including the Hawai'i County Council, who supported this measure, that the state legislature isn't serious about public funding of elections.

I understand the challenges facing the state and the hard choices you and your colleagues are going to have to make to balance the budget this year, however I don't believe postponing the implementation of Act 244 should be considered as money saving option. According to Voter Owned Hawai'i, the publicly funded elections test program for Hawai'i County Council races will cost approximately $350,000 to $550,000 during a two-year election cycle. At most it might cost as much as $760,000 during a two-year cycle, and so averaging $380,000 per year during the 2010 election cycle. In the projected 2.1 billion dollar budget shortfall, the funding provided for Act 244 is a drop in the bucket. Additionally, it is my understanding that a separate fund already exists to finance candidates who choose to run a publicly funded campaign. Will this bill eliminate that fund?

Despite the state's current financial crisis, I believe those opposed the publicly funded elections will always find a reason, an excuse to postpone, or even suspend indefinitely implementation of Act 244.

Is the state looking at cost saving measures related to elections; perhaps the elimination of early walk-in voting? Open, free, and fair elections are central to a well-functioning democracy and I believe publicly financed candidate are central open, free, and fair elections. I understand Act 244 is merely a test run of publicly funded elections in the State of Hawai'i, but I truly believe that they will prove successful, allowing for the expansion of publicly funded elections to all state elections. In my opinion, to postpone the implementation of Act 244 severely undermines the virtue of publicly funded elections.

I urge you to be brave, show wisdom, and vote against the passage of HB 345 and uphold the virtue of publicly funded elections.

Mahalo for your time and consideration.

*Labor and materials for this donated.*

**Progressive Democrats of Hawai'i**
http://pd-hawaii.com
2457 Lamaku Pl, Honolulu, HI 96816
email: info@pd-hawaii.com
tel: 808.265.1334

Aloha,
Joshua R. Frost
1418 Mokuna Pl.
Honolulu, HI 96816

*Labor and materials for this donated.*

Hawaii
COMMON CAUSE
Holding Power Accountable
P.O. Box 22703 • Honolulu, Hawaii 96823 • (808) 286-2285 • info@commoncausehawaii.org

**House JUD Committee**
**Friday 2/13/09 at 2:20PM in Room 325**
**House Bill 345**

TESTIMONY
Nikki Love, spokesperson, Common Cause Hawaii

Chair Karamatsu, Vice Chair Ito, and Committee Members,

I am testifying in **opposition to HB 345.** This bill postpones the Big Island public funding program until 2014, instead of beginning in 2010.

Public funding is an effective way to retool the way we fund campaigns by encouraging grassroots campaigning and removing special interest money from the electoral process. The public funding bill was enacted in part because it was enthusiastically endorsed and requested by the Big Island County Council. The program also has the support of many citizens around the state who wish to try a new way of funding our political campaigns.

There's no reason for delay. There is a wealth of experience from other states and municipalities regarding implementation that can be adopted for our needs. Common Cause Hawaii would be happy to assist in making connections with other jurisdictions and organizations who could provide implementation assistance here. We look forward to seeing the program work even better in Hawaii, so that we can serve as an example to other states in the future.

**Mahalo.**

TESTIMONY

TO THE HOUSE JUDICIARY COMMITTEE

ON HOUSE BILL NO. 345

RELATING TO CAMPAIGN SPENDING

February 13, 2009

Chair Karamatsu, Vice-Chair Ito, and members of the House Judiciary Committee, thank you for the opportunity to testify in support of House Bill No. 345.

The purpose of House Bill No. 345 is to delay the applicability of Act 244, Session Laws of Hawai'i 2008 (a pilot project for publicly funded campaigns for Hawai'i County Council) to the 2014, 2016, and 2018 general election years. I support delay because Act 244 was a bad idea.

Publicly funded elections will waste tax dollars: forcing taxpayers to fund the political campaigns of candidates they disagree with is no cure for better government. No one has ever shown that publicly funded campaigns lead to better government.

Why should candidates for certain Council districts receive vastly more money than those candidates running for other Council seats? In my opinion this discriminates against population segments on our island.

If the revenues are insufficient to meet distributions to candidates, the spending commission shall then permit candidates to accept and spend contributions beyond the limits of the pilot project. Is this fair? Will this lead to a first-come, first-served payout?

Why should a candidate not participating in a publicly funded campaign be limited by fear of driving up public money for who know how many candidates running against him or her? Who is to protect against candidates running against each other just to stockpile money against a common opponent? Why should the taxpayers pay for this?

I urge this committee to repeal Act 244, or at the very least pass House Bill 345 to delay its implementation.

Thank you for the opportunity to testify on HB 345.

Kathleen Kosaka
820 Uilani Place
Hilo, Hawai'i 96720

## karamatsu3-Leanne

**From:** William Bailey [shanti108@hawaii.rr.com]
**Sent:** Thursday, February 12, 2009 10:42 AM
**To:** Rep. Jon Karamatsu; Rep. Ken Ito; JUDtestimony
**Subject:** Strong opposition to HB 345 -- Delaying Fair Elections Bill

**Categories:** Orange Category

Jon Riki Karamatsu
Ken Ito
Committee on Judiciary

William Bailey
shanti108@hawaii.rr.com
2161 Puna St.
Honolulu, HI 96817

Friday, February 13, 2009 02:20 PM

Strong opposition to HB 345 -- Delaying Fair Elections Bill

I'm writing in strong opposition to HB 345. Apparently the sponsors of this bill do not plan to run for reelection in 2014.

In other states where a Fair Elections program is running, there are more people running for office, less corruption, higher voter turnout, and greater participation from people in rural areas.

Please vote against this bill.

## karamatsu3-Leanne

**From:** Shawn James Leavey [shawnjamesleavey@gmail.com]
**Sent:** Thursday, February 12, 2009 11:57 AM
**To:** Rep. Jon Karamatsu; Rep. Ken Ito; JUDtestimony
**Subject:** Strong opposition to HB 345 -- Delaying Fair Elections Bill

Jon Riki Karamatsu
Ken Ito
Committee on Judiciary

Shawn James Leavey
shawnjamesleavey@gmail.com
PO Box 642
Honokaa, HI 96727

Friday, February 13, 2009 02:20 PM

Strong opposition to HB 345 -- Delaying Fair Elections Bill

Dear Rep Karamatsu and members of the committee:

UH-Hilo students worked damn long and hard to get this pilot project for Clean Elections started. You'd better watch your back if you think you're even goin' try to stop this before it gets off the ground.

truly yours,
Shawn James Leavey

## karamatsu3-Leanne

**From:** Susan Dursin [sgd8@hawaiiantel.net]
**Sent:** Thursday, February 12, 2009 2:17 PM
**To:** Rep. Jon Karamatsu; Rep. Ken Ito; JUDtestimony
**Subject:** Strong opposition to HB 345 -- Delaying Fair Elections Bill

Jon Riki Karamatsu
Ken Ito
Committee on Judiciary

Susan Dursin
sgd8@hawaiiantel.net
P.O. Box 746
Capt. Cook, HI 96704

Friday, February 13, 2009 02:20 PM

Strong opposition to HB 345 -- Delaying Fair Elections Bill

I'm writing in strong opposition to HB 345. As Co-president of the Hawaii County League of Women Voters, I know how hard our group worked, alongside various other organizations and concerned citizens, to put a pilot program for the Big Island in place. The concept was well-received by the public, and obviously, a majority of Council members were behind it.

It is irresponsible to gut HB 244 because some Big Island legislators are fearful that the program may be so successful that it will spread and they will face increasing competition from people who now are willing and able to run but do not believe they should have to spend energy and money raising contributions from sources that they will, in the end, feel indebted to.

This is a program that the public wishes to see in place. It should not be eroded or decimated because incumbents wish to maintain their special edge.

Please vote against HB345.

## karamatsu3-Leanne

**From:** Meleana Judd [meleanajudd@gmail.com]
**Sent:** Thursday, February 12, 2009 7:59 PM
**To:** Rep. Jon Karamatsu; Rep. Ken Ito; JUDtestimony
**Subject:** Strong opposition to HB 345 -- Delaying Fair Elections Bill

Jon Riki Karamatsu
Ken Ito
Committee on Judiciary

Meleana Judd
meleanajudd@gmail.com
59-414 Kamehameha Hwy
Haleiwa, HI 96712

Friday, February 13, 2009 02:20 PM

Strong opposition to HB 345 -- Delaying Fair Elections Bill

Aloha Chairs and Members of the Committee. My name is Meleana Judd and am in strong opposition to HB 345.
Delaying the implementation of such an important pilot for our State would be a slap in the face for the effort to restore democracy to our political process and eliminate the buying of law that exists today. Please hold this measure.

TESTIMONY OF CARLA OSORIO

TO THE HOUSE JUDICIARY COMMITTEE

ON HOUSE BILL NO. 345

RELATING TO CAMPAIGN SPENDING

February 12, 2009

Chair Karamatsu, Vice-Chair Ito, and members of the House Judiciary Committee, thank you for the opportunity to testify in support of House Bill No. 345.

The purpose of House Bill No. 345 is to delay the applicability of Act 244, Session Laws of Hawai'i 2008 (a pilot project for publicly funded campaigns for Hawai'i County Council) to the 2014, 2016 and 2018 general election years. I support delay because Act 244 was a bad idea.

Publicly funded elections will waste tax dollars: forcing taxpayers to fund the political campaigns of candidates they disagree with is no cure for better government. No one has ever shown that publicly funded campaigns lead to better government.

Why should candidates for certain Council districts receive vastly more money than those candidates running for other Council seats? In my opinion this discriminates against population segments on our island.

If the revenues are insufficient to meet distributions to candidates, the spending commission shall then permit candidates to accept and spend contributions beyond the limits of the pilot project. Is this fair? Will this lead to a first-come, first-served payout?

Why a candidate not participating in a publicly funded campaign should be limited by fear of driving up public money for who know how many candidates running against him or her? Who is to protect against candidates running against each other just to stockpile money against a common opponent? Why should the taxpayers pay for this?

I urge this committee to repeal Act 244, or at the very least pass House Bill No. 345 to delay its implementation.

Thank you for the opportunity to testify on HB 345.

TESTIMONY OF EMIL OSORIO

TO THE HOUSE JUDICIARY COMMITTEE

ON HOUSE BILL NO. 345

RELATING TO CAMPAIGN SPENDING

February 12, 2009

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Thank you for the opportunity to testify on HB 345.

TESTIMONY OF **Arnold H. Hara**

TO THE HOUSE JUDICIARY COMMITTEE

ON HOUSE BILL NO. 345

RELATING TO CAMPAIGN SPENDING

February 12, 2009

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I urge this committee to repeal Act 244, or at the very least pass House Bill No. 345 to delay its implementation.

Thank you for the opportunity to testify on HB 345.

**karamatsu3-Leanne**

**From:** Wayne Subica Jr. [subicajrw001@hawaii.rr.com]
**Sent:** Thursday, February 12, 2009 9:24 PM
**To:** JUDtestimony

TESTIMONY OF RAYELLE SUBICA
TO THE HOUSE JUDICIARY COMMITTEE
ON HOUSE BILL NO. 345
RELATING TO CAMPAIGN SPENDING
February 12, 2009

Chair Karamatsu, Vice-Chair Ito, and members of the House Judiciary Committee, thank you for the opportunity to testify in support of House Bill No. 345.

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I urge this committee to repeal Act 244, or at the very least pass House Bill No. 345 to delay its implementation.

Thank you for the opportunity to testify on HB 345.

**karamatsu3-Leanne**

**From:** Wayne Subica Jr. [subicajrw001@hawaii.rr.com]
**Sent:** Thursday, February 12, 2009 9:25 PM
**To:** JUDtestimony

TESTIMONY OF CHRISTAL SUBICA
TO THE HOUSE JUDICIARY COMMITTEE
ON HOUSE BILL NO. 345
RELATING TO CAMPAIGN SPENDING
February 12, 2009

Chair Karamatsu, Vice-Chair Ito, and members of the House Judiciary Committee, thank you for the opportunity to testify in support of House Bill No. 345.

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I urge this committee to repeal Act 244, or at the very least pass House Bill No. 345 to delay its implementation.

Thank you for the opportunity to testify on HB 345.

To: Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice Chair
House Committee on Judiciary

From: Seth Corpuz-Lahne
103A Prospect St
Honolulu, HI 96813

RE: Strong opposition against HB 345, Relating to Campaign Spending

Hearing: Thursday February 13, 2009
Conference Room 325
2:20 PM

Chair Karamatsu, Vice-Chair Ito, members of the House Judiciary Committee, thank you for this opportunity to testify in strong opposition to HB 345. Last year the Legislature passed Comprehensive Public Funding as a pilot program for the Hawaii County Council elections, scheduled to start in 2010.

Comprehensive Public Funding is an alternative to the partial funding method, and like it, seeks to make it easier for people who aren't able to draw donations from traditional large donors to run for public office, and to decrease the influence of campaign contributions on public policy. While partial funding was very progressive at the time of its implementation, time has shown us that most candidates who take the partial funding option, unless incumbents or unopposed, have a lower chance of success than those candidates who choose not to impose on themselves spending limits.

Given the low cost of the Hawaii County Council elections, Hawaii County's desire to test this public funding method, and the fact that we are as yet a year away from the beginning of the pilot project, to delay its implementation would send a clear message that higher public office is reserved for those with wealth and connections.

I ask for the committee to **hold** this bill, HB 345, Relating to Campaign spending, so that the Comprehensive Public Funding pilot project will begin on schedule. Mahalo.

TESTIMONY OF AARON CHUNG

HOUSE COMMITTEE ON JUDICIARY
HEARING DATE: FRIDAY, FEBRUARY 13, 2009

REGARDING HB 345, RELATING TO CAMPAIGN SPENDING

Chair Karamatsu and Members of the House Committee on Judiciary,

Thank you for allowing me the opportunity of weighing in on HB 345, relating to campaign spending, which seeks to amend the pilot project for comprehensive public funding of Hawaii county council elections, created last year by Act 244, by moving the commencement date of such project to the election year 2014 instead of 2010. I applaud the Legislature for revisiting the matter and proposing to delay its implementation. In that sense, I suppose that you could say for the record that I support the bill. Still, in my opinion, and because the underlying Act has caused me many sleepless nights since its enactment, the bill does not go far enough. I believe that Act 244 should be repealed.

First off, let me say that I am not submitting this testimony at anyone's request, nor do I stand to benefit in any way from the passage or defeat of the instant measure. My only interest in this matter is that of a very concerned citizen and as stated above, I have been troubled over this pilot project for many months now. As a retired four-term Hawaii County Council member, I take special, albeit sometimes passing, interest in issues regarding campaign reform and those affecting the Big Island. In one fell swoop, Act 244 caused those two areas of interest to collide. I confess to not knowing the precise aspects of the pilot project as everything that I know of Act 244 has come from reading the local newspaper. Based on what limited information I do have, though, I object to the implementation of Act 244 on several levels.

1. The electoral process is the foundation under which our entire democratic system of government is built. Everything that we stand for as a nation is predicated on the integrity of that process. Act 244, which creates a separate set of rules for one county and one type of race, is in essence a special law. We all know that such laws are suspect. Still, at all levels of government, we see fit to take license in enacting such laws from time to time. I can accept that. What I cannot accept, is a special law which cuts through the very fabric from which this country is woven. All laws pertaining to elections within a certain jurisdiction should be consistent and made applicable across the board.

2. I like to think that a candidate's ability to raise campaign funds is a function of the time and effort that person has invested into the community, and

that generally speaking, and under those circumstances, the persons who contribute or who are asked to contribute to a particular candidate's campaign are a reflection of the type of leadership that is being promised. Regardless of what philosophies they may espouse, these candidates are the serious ones, those willing to work hard for the purpose of getting their message across. Act 244 sets up a system whereby those who have little or no financial, personal or community investment, can reap all of the rewards of hard working, heavily invested individuals. The potential for abuse is enormous and obvious. However, of greater concern is the invasion of the welfare mentality into the electoral process. Being a Democrat, I must admit to having some socialist tendencies. However, the free-money, riding-on-the-coattails-of-others policy advanced by Act 244 is too much for even my tastes. Not only does It provide a disincentive to hard work (a candidate's hard work can reasonably be expected to come back to work against him or her), but worse still, it provides an incentive to do things illegally.

3. Act 244 creates a system that is blatantly unfair. Imagine for a second the likely situation of having nine council races, each with a widely varying range of public funding resources. The incumbent candidate who ran unopposed during the election immediately prior to the commencement of the pilot project would face less resistance and therefore have an easier ride into re-election than his or her first-term colleague who needed to raise money during that person's first election in order to wage a viable campaign.

4. If the system created under Act 244 is indeed a pilot project, there must be some objective measures in order to judge the efficacy thereof and the social policy it is intended to advance. If there are no such measures, there can be no legitimate justification for such project to exist. Assuming, however, that Act 244 includes such measures and assuming even further that the pilot project is subsequently deemed a success based on such measures, what then? Will this Legislature be prepared to devote the necessary resources to implement a similar type of system for all of the county council races throughout the State? Better yet, would it be inclined to adopt that approach for all races within its jurisdiction? If the answer is "no" to either one of these questions, in other words if there is no clear resolve for follow-through, then one has to question the underlying need for this pilot project.

Please consider repealing Act 244. Thank you for considering my thoughts on this matter.

23 INDIVIDUALS - FORM LETTER

**karamatsu3-Leanne**

**From:** Scott Foster [fosters005@hawaii.rr.com]
**Sent:** Thursday, February 12, 2009 2:01 AM
**To:** Rep. Jon Karamatsu; Rep. Ken Ito; JUDtestimony
**Subject:** Strong opposition to HB 345 -- Delaying Fair Elections Bill

**Categories:** Orange Category

Jon Riki Karamatsu
Ken Ito
Committee on Judiciary

Scott Foster
fosters005@hawaii.rr.com
3050 Kahaloa Place
Honolulu, HI 96822

Friday, February 13, 2009 02:20 PM

Strong opposition to HB 345 -- Delaying Fair Elections Bill

I'm writing in strong opposition to HB 345. After 10 years of citizen volunteers working to pass this important reform, it's irresponsible for a handful of Big Island state Representatives to introduce a bill that would delay a program like this.

Fair elections is a reform that opens up the playing field for people to run for office. It allows people who are not connected to wealthy mainland and statewide contributors to have a chance to try and qualify for public money by going door-to-door in their own districts.

In other states where a Fair Elections program is running, there are more people running for office, less corruption, higher voter turnout, and greater participation from people in rural areas.

It would be absolutely irresponsible to change Act 244 out of convenience for a handful of Representatives from the Big Island.

Please vote against this bill.