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**STATE OF HAWAII**  
**CAMPAIGN SPENDING COMMISSION**  
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January 31, 2011

**TO:** The Honorable Gilbert S.C. Keith-Agaran, Chair  
House Committee on Judiciary

The Honorable Karl Rhoads, Vice-Chair  
House Committee on Judiciary

Members of the House Committee on Judiciary

**FROM:** Kristin Izumi-Nitao, Executive Director *KIN*  
Campaign Spending Commission

**SUBJECT:** Testimony on H.B. No. 872, Relating to Campaigns<sup>1</sup>

Tuesday, February 1, 2011  
2:00 p.m., Conference Room 325

Thank you for the opportunity to testify on this bill. The Campaign Spending Commission ("Commission") has concerns regarding this bill but supports the apparent intent to increase transparency through disclosure.

This bill requires a "person" as defined under section 11-302 other than "an individual" (i.e., a partnership, a candidate committee or noncandidate committee, a party, an association, a corporation, a business entity, an organization, or a labor union and its auxiliary committees) who makes contributions and expenditures in an aggregate amount of \$1,000 or more in a two year election period to influence the nomination for election, the election of any candidate to political office, or for or against any issue on the ballot, to register as a noncandidate committee and comply with existing and additional reporting requirements. This bill further repeals section 11-332 which was enacted last legislative session which requires corporations who contribute from their treasury more than \$1,000 per two year election period to a candidate or candidate committee, to file a report with the Commission. It would therefore appear that this bill seeks to treat all entities as noncandidate committees.

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<sup>1</sup> The companion bill (S.B. No. 1114, Relating to Campaigns) was referred to the Judiciary and Labor Committee.

The Commission has always supported legislation that increases transparency and welcomes clarity to an area that has been marked with challenges and difference of opinion. We would however like to point out some concerns with this bill by addressing relevant sections.

Section 2 – The new section entitled “Campaign contributions; noncandidate committee” creates confusion and discrepancy with our statutorily accepted definition of “person” under section 11-302 by excluding “an individual.” If, however, this is not of concern, we would recommend a less cumbersome amendment to enact the purpose of this new section which would not require the enactment of a new section. Specifically, by adding “a person” to the definition of “Noncandidate committee” under section 11-302 (which is provided in section 3 of this bill), section 11-321(g) requires noncandidate committees to register within ten days of receiving contributions for making or incurring expenditures of more than \$1,000 in the aggregate in a two year election period.

Section 3 – We believe that it would be confusing to add the word “person” to the definition of “candidate committee” if the intent of this bill is to require “person” as presently defined, but to exclude individuals, to register as noncandidate committees. We may have concerns regarding reporting candidate and noncandidate committees engaging in internet activities for the purpose of influencing an election as expenditures, but have insufficient information to offer any further comment at this time.

Section 4 – We support the proposed changes and note that similar amendments have been submitted in our legislative proposal in H.B. 257.

Section 5 – We oppose changing the filing dates for preliminary reports for noncandidate committees to be tied to the first day that walk-in ballots are accepted due to operational, administrative, and fairness concerns. The first day that walk-in ballots are accepted are not set dates and not codified in our statutes. The Commission would therefore be unable to calculate and notify noncandidate committees of their filing deadlines. Because our present statutes have fines for not reporting by designated due dates, we do not believe it would be fair to impose deadlines that are not preset. In contrast, the filing dates in existence now are connected to the primary and general election dates which are set by statute.

Section 6 – Since the enactment of the electioneering communications statute, there have been only three entities who have filed electioneering communications with the Commission. If enacted, the Commission would revise our present form to require the disclosure of additional information as stated. We would however like to state our strong reservations regarding proposed subsection (e) which would require the Commission to develop another electronic system for entities to comply with this section. In the past, when we have been required to develop such systems for operation, it has taken us at least six to eight months to develop. As

such, we would be unable to implement this section if this bill were to take effect upon its approval. Lastly, we would like to suggest changing the word “disbursement” to “expenditures” to align the terms used in the campaign finance laws for consistency. Notably, we have proposed this change in H.B. 257.

Section 7 – The Commission would support this section only if the campaign finance laws require corporations to register and file in another capacity including as noncandidate committees. “Requiring for-profit corporations to report contributions and expenditures not only fosters public confidence in government through a more informed electorate . . . , but also serves as a critical crosscheck for ensuring the accuracy and completeness of reporting by candidates and other recipients of corporate contributions.” Colorado Common Cause v. Meyer, 758 P.2d 153 (Colo. 1988).<sup>2</sup>

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<sup>2</sup> “[I]nformed public opinion is the most potent of all restraints upon misgovernment.” Buckley v. Valeo, 424 U.S. 1, 67, 96 S.Ct. 612, 658 (1976) (quoting Grosjean v. American Press Co., 297 U.S. 233, 56 S.Ct. 444, 449 (1936)). “[D]isclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity.” Id. at 67, 96 S.Ct. at 657 (1976). “Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.” Id. (quoting L. Brandeis, Other People’s Money 62 (National Home Library Foundation ed. 1933)).



House Committee on Judiciary  
Tuesday, February 1, 2011  
2:00 p.m.

**HB 872, Relating to Campaigns**

Dear Chairman Keith-Agaran:

On behalf of the Board of Directors of the University of Hawaii Professional Assembly (UHPA), our union supports the intent of this bill to make independent expenditures more traceable through disclosure of funding sources and identifying the intended beneficiaries.

UHPA agrees that independent expenditures warrant further regulation. Since the Citizens United case all practical limits on independent expenditures have been removed making it difficult to identify funding sources and the persons behind these expenditures. UHPA wants to insure that those seeking to influence local elections are not anonymous or representing out-of-state interests.

UHPA believes that the current proposal could use some rewording for clarity to more directly achieve its objectives. UHPA recommends that this bill advance in the hopes that the committee will be open to some language changes that can assist in this effort for increased transparency. UHPA looks forward to a continuing dialogue on this important matter.

Respectfully submitted,

Kristeen Hanselman  
Associate Executive Director

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January 30, 2011

TO: Chair Gilbert Keith-Agaran, Vice Chair Karl Rhoads  
Members of the House Committee on Judiciary

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

#### TESTIMONY IN SUPPORT OF HB 872 RELATING TO VOTING

Americans for Democratic Action/Hawaii generally supports HB 872 as making much needed improvements in the reporting of campaign expenditures. In a democracy, where each person has its own set of interests, it is important that the public know who is funding campaigns and candidates as a way to know what interests are being pursued and what interests may influence an elected official in the future.

We do have some specific suggestions and concerns regarding this bill, offered with the intent of clarifying and improving it. We realize that the Supreme Court's decision last year in the Citizens United vs. the FEC has drastically changed the landscape of election financing, making it difficult to craft legislation that maintains transparency of campaign financing.

A. Page 2, line 7 excludes individuals from registering as a non-candidate committee. However, if an individual makes independent expenditures to influence an election, that individual should also be subject to the registration and reporting requirements of this section. Otherwise, there is no transparency of such individual expenditures.

B. We are concerned about the differential treatment of individual campaign contributions and those of expenditures by other persons (corporations, unions, etc.). Page 2, line 3, designed (as written) for contributions or expenditures by entities other than individuals, requires reporting only if **more than \$1000** is spent. Page 6, line 19, designed primarily for individual contributions, says that contributors of **more than \$100** to a candidate or non-candidate committee must have their name and other personal information included in the committee reports. Pages 8-9, lines 21-1 on electioneering communications requires reports after a person (usually a corporate entity) **spends \$2000**.

Some of the discrepancy could be eliminated by ensuring that all three refer to both corporate entities and individuals (as recommended in our point A. above). However, the discrepancy in the amounts that trigger reporting for different types of expenditures or contributions remains.

We urge that they be made uniform by using the long-standing criterion of \$100 that has been applied to individual donors to campaigns. The entry of corporate entities into greater participation in the political process should not be an excuse to raise that criterion.

C. Regarding matters to be included in committee reports on p. 7 line 3ff, the word "contribution" is unclear. A possible rewording would be (added words italicized):

The amount and date of each contribution made by *a candidate committee or noncandidate committee to another candidate committee or non-candidate committee*, and the name and address of the candidate committee or non-candidate committee to which the contribution was made.

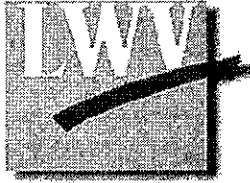
D. P. 10, lines 19-20 on requirements in electioneering communication reports includes:

. . . the names and addresses of all persons who contributed to the general treasury funds designated for use as a campaign contribution . . .

The problem here is that unless a corporate entity is required to have a segregated fund for political contributions into which persons can make donations, this would appear not to provide information about who is funding a given communication. For example, the reports filed in the last election by such groups as the Democratic and Republican Governors Conferences and the Chamber of Commerce all answered this question by saying there were no such contributions. That is surely true, since donations to such organizations are for general purposes, not for a specific campaign activity. As a result, there is a large loop-hole in the attempts at campaign finance transparency that allows persons to influence the political process without any reporting, by contributing money through another corporate organization.

Finally, we fully support the recommended changes in the timing of reports by candidate and non-candidate committees. The increased use of absentee voting, either mail-in or walk-in, has changed the times at which information to the public is needed. The change on p. 8, line 11ff requires reporting prior to walk-in balloting, while that on p. 2 lines 9ff that requires the reporting of late expenditures immediately before an election ensures that voters on election day have up to date information.

Americans for Democratic Action/Hawaii urges you to pass this bill, preferably with changes to address the issues mentioned above.



# THE LEAGUE OF WOMEN VOTERS OF HAWAII

## TESTIMONY ON HB 872 RELATING TO CAMPAIGNS

Senate Committee on Judiciary  
Tuesday, February 1, 2011  
2:00 p.m.  
Conference Room 325

Testifier: JoAnn Maruoka

Chair Keith-Agaran, Vice Chair Rhoads, members of the Judiciary Committee,

The League of Women Voters of Hawaii strongly supports the intent of HB 872. We are heartened by the effort to increase disclosure and transparency of campaign contributions, especially considering the January 2010 Supreme Court decision on Citizens United v. Federal Election Commission. That decision rejected long-standing corporate and union political spending limits, and concluded that corporations have the same rights as individuals when it comes to political speech. We, our National League, many other organizations and a very large percentage of the US population who were polled found the landmark ruling tragic and deplorable.

In fact, our National League president testified to Congress that the decision "is constitutionally irresponsible and will surely bring about an anti-democratic revolution in how we finance elections in this country... the basic pillars of American democracy have been undermined – that elections should not be corrupted by vast corporate wealth and that the voters should be at the center of our democratic system." In the 2010 midterm election, we certainly witnessed the effects of the Citizens United decision in the torrent of nontransparent independently-funded campaign ads, many of them extremely negative.

Until Congress can come up with legislation to overcome the negative aspects of the Citizens United decision favoring corporate "citizens", we must work to ensure fairness in the interest of human citizens. This bill takes positive steps in that direction, and should be passed.

Thank you for the opportunity to testify in strong support of HB 872.