

KRISTIN IZUMI-NITAO  
EXECUTIVE DIRECTOR



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

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

February 23, 2012

**TO:** The Honorable Marcus R. Oshiro, Chair  
House Committee on Finance

The Honorable Marilyn B. Lee, Vice Chair  
House Committee on Finance

Members of the House Committee on Finance

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

**SUBJECT: Testimony on H.B. No. 2174, H.D. 1, Relating to Campaign Spending**

Friday, February 24, 2012  
12:00 p.m., Conference Room 308

Thank you for the opportunity to testify on this bill. The Campaign Spending Commission ("Commission") supports the intent of this bill because the bill enhances transparency in campaign spending. The Commission, however, has strong reservations and practical concerns about implementing the bill considering that this is an election.

Section 2 of the bill amends Hawaii Revised Statutes ("HRS") §11-302 by adding a new definition of "entity." We believe that this amendment is not necessary and would be redundant because the definition of "person" in the same section already includes the persons listed in the definition of "entity."<sup>1</sup>

Section 3 of the Bill amends HRS §11-314 concerning the duties of the Commission. In H.B. No. 1756, H.D.1, the Commission seeks to amend the last sentence of paragraph (5) by add replacing "section" with "sections 11-340 and." We would like to see this amendment in this bill too.

Section 4 of the bill requires the Commission to create a "searchable database" for all reports required to be filed with the Commission. "Searchable database" is defined, in part, as one that allows any person on the Commission's website to search any report by any identifying element required in the report and ascertain through a single search the total amount of contributions or expenditures for a person, party, candidate, candidate

---

<sup>1</sup> Thus, references to "entity" on page 4, line 21, and page 5, line 20, should also be replaced by "person."

committee, or noncandidate committee for the applicable reporting period. Pursuant to Section 12 of this bill, the Commission would have to make this searchable database available to the public within 360 days of the effective date of the Act.

Section 5 of the bill promotes transparency in campaign spending by enhancing the reporting of expenditures and independent expenditures made by noncandidate committees. Section 6 of the bill enhances the reporting of expenditures made by both candidate and noncandidate committees by requiring the reporting, in a late expenditures report, of any expenditure that is to be rendered during the last three days of an election period. Section 7 of the bill promotes more disclosure by requiring entities, other than candidates or candidate committees, to file a late report disclosing contributions or independent expenditures made between fourteen and four calendar days before an election on the third calendar day before the election. This section would also require that a new report be filed with the Commission and thus modifications to the Commission's electronic filing systems would have to be made.

The Commission has concerns about its ability to timely implement sections 4, 5, 6, 7, and 12 of the bill as they require significant modifications to the Commission's electronic filing systems. Commission staff has discussed this bill with the Information and Communication Services Division ("ICSD") of the Department of Accounting and General Services, the agency that developed our electronic filing systems and would be responsible for making the necessary changes to the system that this bill would require. Our discussions with them revealed that an entirely new function or system would need to be developed in order to perform ad hoc queries and reports on data spanning reporting periods, election periods, and different electronic filing systems. They explained that the candidate, noncandidate, and corporate electronic filing systems were developed as a static reporting system and that this type of functionality was not built in. As such, extensive analysis would need to be performed and requirements gathered to determine what is needed to successfully create this new function or system as well as consideration of procuring additional software tools. ICSD further noted that they would also need to consider the impact of a searchable database on the performance of the existing electronic filing systems, especially during the filing of reports, which may require procuring additional hardware to minimize the load on the existing systems. Based on the aforementioned and in consideration of current resource assignments, ICSD did not believe that they are in a position to successfully complete this project within 360 days of the effective date of the Act (assuming the effective date would be in July 2012).

Section 9 of the bill, on page 16, lines 1-3, refers to "an electioneering communication report." That reference should instead be to "an electioneering communication statement of information" because that is the name of the filing required by HRS §11-341 for electioneering communications. If passed, this section would require the Commission to add and seek more information than is currently on the electioneering communication statement of information.

The Honorable Marcus R. Oshiro  
Testimony on H.B. 2174, H.D. 1  
February 23, 2012  
Page 3

Section 10 of the bill requires that advertisements identify the top donors for the purpose of the advertisement or top donors for the entity paying for the advertisement. For the latter, page 19, lines 3-6, we suggest replacing "during the election cycle" with "as of the date the advertisement was purchased" because the top donors during an election period (or cycle) can only be determined after the election. At the very least "election cycle" should be replaced by "election period," since the former term is not used in the state campaign spending law. We are otherwise in support of sections 9 and 10 which promote transparency in campaign spending.

Section 11 of the bill, which completely repeals HRS §11-332, would in effect eliminate the Corporate Electronic Filing System that the Commission and ICSD built and launched in March 2011.

Accordingly, the Commission respectfully requests that that the committee put language in the bill that will allow the Commission more time to implement the part of the bill requiring the implementation of a searchable database and the enhanced reporting requirements that require modification of the Commission's Candidate and Noncandidate Electronic Filing Systems. At the very least, the effective date must be after the completion of the 2012 elections.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SIXTH LEGISLATURE, 2012**

---

**ON THE FOLLOWING MEASURE:**

H.B. NO. 2174, H.D. 1, RELATING TO CAMPAIGN SPENDING.

**BEFORE THE:**

HOUSE COMMITTEE ON FINANCE

**DATE:** Friday, February 24, 2012

**TIME:** 12:00 p.m.

**LOCATION:** State Capitol, Room 308

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Robyn B. Chun, Deputy Attorney General

---

Chair Oshiro and Members of the Committee:

The Department of the Attorney General (the "Department") supports the intent of this bill, but believes the bill has significant practical and legal concerns resulting from amendments it proposes. For that reason, we recommend that the Committee pass this bill only with the amendments listed below.<sup>1</sup>

The purpose of this bill, generally, is to increase the disclosure requirements in Hawaii's campaign finance laws. This purpose is strongly supported by recent Supreme Court and Ninth Circuit case law, and for that reason the Department sees no legal problem with the fundamental principles behind the bill. In its implementation, however, the proposed amendments to chapter 11, Hawaii Revised Statutes (HRS) pose a number of legal problems.

***Concerns Regarding "Entity" Status.***

The major problem with the proposed amendments is the addition of new reporting requirements to apply to an "entity." These amendments are unnecessary because any organization (regardless of form) that accepts contributions or makes expenditures in excess of \$1000, in the aggregate, is already required to file disclosure reports with the Campaign Spending Commission under existing law. The organization would file reports as a noncandidate committee. (Noncandidate committee is Hawaii's term for what is often called a political action committee or PAC in other jurisdictions). Section 11-302, HRS, which defines noncandidate

---

<sup>1</sup> For purposes of clarity, we note that many of the provisions we comment on here originated with H.B. 2376, which the House Committee on Judiciary considered with this bill earlier this month. For example, when H.B. 2376 was before the House Committee on Judiciary, our testimony suggested that an "entity" reporting status be eliminated as redundant.

committee, makes this obligation apply to any organization that meets the requirements. (The \$1000 threshold is in section 11-321(g), HRS.) It is important to note that Hawaii law does not require that an organization form a separate legal entity to serve as a noncandidate committee; the organization is the noncandidate committee.

Adding a definition of “entity” (section 2) is unnecessary, as section 11-302, HRS, already defines “person” to include all of the organizations listed in the proposed definition of “entity.” Furthermore, sections 4 and 7 of the bill would add separate reporting requirements for entities into sections 11-331 and 11-338, HRS, even though those sections only apply to organizations that have pre-existing registration requirements under section 11-321, HRS. Under existing law, an entity is already required to register as a noncandidate committee if it makes \$1000 in contributions or expenditures, regardless of its legal or business status. The proposed amendments concerning entities are therefore redundant, and would increase the chance of confusion in the implementation of this chapter.

To serve the apparent intent of this measure while avoiding the redundancy and potential for confusion explained above, we respectfully recommend that this Committee make several amendments. First, the intent of one of the “entity” amendments (the new paragraph (2) added to the electioneering communications provision, section 9 of the bill, page 14, lines 6-8) can be equally well served if amended to read: “(2) If the expenditure was made by a noncandidate committee or an organization, the names and titles of the executives or board of directors who authorized the expenditure;”.<sup>2</sup> Second, “entity” should be changed to “organization” on page 14, line 10, for the same reason. Third, the reference to “entity” in the amendments to the advertisement provision (section 10 of the bill, page 19, lines 3-6) should be replaced with “organization,” so that addition would state: “The top donors for this organization are . . . .”

Finally, the other “entity” additions should be eliminated as redundant. The sections that should be eliminated are: the definition of entity (section 2 of the bill) and the new subsection (e)(3) added to 11-331, HRS (section 4 of the bill, page 5, line 20). As noted above, eliminating these provisions will not decrease disclosure because noncandidate committee status already covers those entities that meet the requirements (that is, receive contributions or make

---

<sup>2</sup> New subsection (c) as added to section 11-338, HRS (section 7 of the bill, page 12, lines 5-21) has the same problem. As explained below, however, the apparent intent of this amendment can be addressed by substituting “noncandidate committee” for “entity.”

expenditures to influence the election of a candidate to office in excess of \$1000 in the aggregate, under sections 11-302 and 11-321(g), HRS). Making these changes would serve the intent of the bill while avoiding the potential for confusion and redundancy.

***Corporation Contributions to Candidates Provision.***

H.D. 1 of this measure eliminates section 11-332, HRS, as redundant. Section 11-332 is specific to corporations that make only contributions to candidates (that is, they do not make independent expenditures or contributions to noncandidate committees) and for that reason partially overlaps with noncandidate committee status (which already covers both contributions and expenditures). Eliminating this provision will not decrease disclosure because a corporation, like any legal entity, is subject to noncandidate committee status if it meets the requirements (over \$1000 in contributions or expenditures under sections 11-302 and 11-321(g), HRS). Providing for a single reporting status for corporations (reporting as noncandidate committees) would also serve the interests of disclosure because it would be uniform and consistent for all corporations, and therefore easier to administer, even if a corporation changes its plans about the types of political activities they will engage in during one election cycle.

The repeal of this provision may cause confusion, however, because independent expenditures by corporations are of great public concern since the United States Supreme Court's decision in Citizens United v. Federal Election Comm'n, 130 S. Ct. 876 (2010). Citizens United overturned longstanding rules banning independent expenditures by corporations regarding federal elections. For that reason, we strongly suggest that, should this Committee elect to repeal section 11-332, HRS, as proposed in this measure, the standing committee report should reiterate this Committee's understanding that corporations are already required to file disclosure reports under our current campaign finance laws if their contributions or expenditures exceed \$1000, under sections 11-302 and 11-321(g), HRS. The corporation provision would be eliminated to enhance consistency in disclosure, not to decrease disclosure obligations by corporations or any other business entity. Such a statement in the legislative history should eliminate any reading that this measure, if enacted, somehow reduces the reporting obligations of corporations.

*Effectiveness of Advertising Amendments.*

This measure makes two amendments to the advertisement provision that evidence an intent to increase disclosure. These are: (1) the top donor provisions and (2) the expansion of “broadcast” to include “electronic means.” Each of these amendments would be made more consistent with existing statutory language, and more effective, by adding parallel language into the electioneering communications provision.

First, this measure adds in a new level of disclosure for advertising, where a person other than a candidate or noncandidate committee must identify the top donors for the advertisement or to the organization itself. This is accomplished by new subsection (b), added to section 11-391, HRS, by section 10 of the bill, pages 18-19. (The amendment suggested above would replace “entity” on page 19, line 3 with “organization”). The effectiveness of this provision would be increased by adding a cross-reference in the electioneering communications provision. Since an electioneering communication is, by nature, an advertisement under section 11-341, HRS, asking for this information in an electioneering communication statement would make the “top donor” information available both in the advertisement itself (the new subsection (b) added by section 10 of the bill) and in the reporting made to the Campaign Spending Commission. This could be accomplished by adding a new paragraph to section 11-341(b), HRS, reading “(9) The top donors for the advertisement or the organization, as required under section 11-391(b)(1).”<sup>3</sup>

Second, the advertisement provision is amended to include “electronic means,” page 17, line 22, but the same amendment is not made to the definition of electioneering communication. The beginning of the definition of electioneering communication, could be amended to read (page 16, line 12): ““Electioneering communication” means any advertisement that is broadcast from cable, satellite, television, by electronic means, or radio broadcast station; published in any periodical or newspaper; or sent by mail . . . .” This would guarantee that advertising conducted by electronic means complies with both the advertisement and electioneering communication requirements, as envisioned under existing law.

---

<sup>3</sup> If this addition is made, renumbered paragraph (7) should end with a semi-colon and renumbered paragraph (8) should end with a semi-colon and the word “and.” Page 15, lines 12 and 20.

***Late Expenditures Report.***

Section 7 of the bill requires certain organizations (other than candidates) to report late expenditures as well as late contributions. But the current amendments do not appear to accomplish that goal. The new subsection (c) added to section 11-338, HRS, to cover entities “other than a candidate or candidate committee” should be amended because it is presupposed on a separate “entity” reporting status that is unnecessary under existing law and confusing, as explained above. To accomplish the objectives of this section of the bill, the new proposed subsection (c) of 11-338, HRS, should identify noncandidate committees as the organizations that are subject to late expenditure reports, instead of an “entity.” Also, the amendment to section 11-338, HRS appears incomplete as the possibility of a late expenditure report has not been incorporated into (redesignated) subsection (d). We recommend that this be amended to read: “[~~e~~] (d) A late contribution report or late expenditure report filed pursuant to this section shall be in addition to any other report required to be filed by this part.”<sup>4</sup>

Finally, in light of the significant changes this bill would make to campaign finance law, to avoid causing possible confusion to candidates and the electorate, we recommend that its effective date be November 7, 2012, the day after the upcoming General Election.

The Department of the Attorney General respectfully requests this Committee to pass the bill only with the amendments suggested herein.

---

<sup>4</sup> In line with the bill’s apparent intent, under these suggested amendments, section 11-338(a) would require late contribution reports for both candidate committees and noncandidate committees, and section 11-338(b) would require late expenditure reports for noncandidate committees only. If it is desired that late reports cover both expenditures and contributions for both candidate and noncandidate committees, section 11-338(a) and (b) should be amended to cover both contributions and expenditures, and new proposed section (c) could be eliminated. What is currently redesignated subsection (d) in the bill could retain its current designation as subsection (c), but with the additional reference to expenditures as noted above.





**House FIN Committee**  
**Chair Marcus Oshiro, Vice Chair Marilyn Lee**

**Friday 2/24/12 at 12:00 noon in Room 308**  
**HB2174 HD1 – Disclosure for Campaign Spending**

**TESTIMONY**

**Nikki Love, Executive Director, Common Cause Hawaii**

---

Chair Oshiro, Vice Chair Lee, and Committee Members:

**Common Cause Hawaii supports HB2174 HD1.** This bill aims to improve transparency and disclosure for campaign finance, especially with respect to independent expenditures.

**BACKGROUND**

Transparency for independent expenditures is a particularly timely issue, as *Citizens United v. FEC* and other court decisions paved the way for unlimited spending by corporations and unions to influence elections. New Super PACs and other entities are popping up at the federal and state levels to take advantage of these new pathways for campaign money.

The public's understanding of this issue has grown over the past two years, and the concern about campaign finance is becoming more widespread. This is even leading to a growing movement nationwide for a U.S. Constitutional Amendment to overturn *Citizens United* and rein in campaign spending by corporations. A recent Civil Beat poll showed that an overwhelming majority of Hawaii voters support this idea.

In this context, other states are beefing up their disclosure requirements, and Hawaii is falling behind. According to the National Institute on Money in State Politics, Hawaii has ranked in the bottom half of the nation with respect to disclosure for independent expenditures. This bill includes important elements to improve this situation.

**IMPORTANT ELEMENTS IN HB 2174**

We support many important elements included this bill:

- **Database** – This bill requires creation of a robust searchable database of all campaign report information.
- **Noncandidate Committee Reporting** – This bill requires noncandidate committees to report additional information including the name of the candidate targeted in

advertisements, and adds certification that independent expenditures are not coordinated.

- **Late Expenditures** – The existing law requires reporting of *late contributions* to disclose donations made just before an election. Now that independent expenditures are gaining prominence, this bill would require reporting of *late expenditures* as well.
- **Electioneering Communications** – This bill requires more details to be reported in electioneering communication reports, and directs the Campaign Spending Commission to create rules to require all persons to file electioneering communication reports.
- **Disclosures on Advertisements** – Advertisements are currently required to include a message disclosing who has paid for the ad, but the names of PACs may not give any real information to the viewers, listeners, or readers. This bill improves the disclosures on advertisements by requiring a listing of their top donors.

We believe this bill provides many strong improvements to our disclosure laws.

#### QUESTION / CLARIFICATION

This bill deletes the current HRS 11-332, regarding the corporate reporting system. It is our understanding that corporations (and any person, other than individuals) will still be required to file noncandidate committee reports if they make donations or expenditures aggregating \$1,000 or more in a two-year election period. We ask the Committee to confirm this understanding before proceeding with deleting HRS 11-332.

Mahalo for your attention to this issue, and mahalo for the opportunity to submit testimony.



---

OFFICERS	DIRECTORS		MAILING ADDRESS
Guy Archer, President	John Bickel	Jan Lubin	PO. Box 617
Juliet Begley, Vice-President	Karin Gill	Stephen O'Harrow	Honolulu
Fritz Fritschel, Treasurer	Tom Horton	Barbara Polk,	Hawai'i 96822
Chuck Huxel, Secretary	Nancy Bey Little	George Simson	Marsha Schweitzer (Alt)

---

February 22, 2012

TO: Chair Marcus Oshiro, Vice Chair Marilyn Lee  
Members of the House Committee on Finance

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

RE: SUPPORT FOR HB 2174 HD 1 RELATING TO CAMPAIGN SPENDING

Thank you for this opportunity to testify on this important bill. Americans for Democratic Action/Hawaii is in strong support of HB 2376. The changes in our political culture brought about by the US Supreme Court's decision in the Citizens United vs. the Federal Election Commission, as well as other court decisions, have resulted in a great influx of money into the Presidential race and threaten to do so for state races as well. Although there is no way the State can stem this flow of money, what can be done is to improve reporting of campaign contributions and expenditures, to allow voters to be able to determine the sources of campaign messages they receive.

Other states have been making changes in their laws to increase transparency, especially for independent expenditures—those expenditures made by individuals, organization, or corporations that are not coordinated with a candidate or a candidate's campaign. HB 2376 would increase the transparency in election campaign expenditures in a variety of ways.

We understand that the Attorney General's Office will be recommending changes to this bill. We have met with them and understand and support the changes they discussed with us, though we have not seen the specific changes they will recommend.

We encourage the committee to pass this bill, with amendments.

February 23, 2012

Re: HB 2174, H.D. 1, Relating to Campaign Spending.  
House Committee on Finance Hearing: February 24, 2012, 12:00 Noon,  
Conference Room 308.

Dear Chair Oshiro, Vice-Chair Lee, and Finance Committee members:

Thank you for the opportunity to submit testimony regarding HB 2174.

I strongly **support** this bill.

Transparency regarding money in politics has always been important, but this is especially true since the 2010 U.S. Supreme Court decision in *Citizens United v. FEC*, 130 S.Ct. 876 (2010). All states, including Hawai'i, need to do their best to make sure that their disclosure laws are effective in a new world of elections practice where spending restrictions have been removed.

Even in *Citizens United*, the Court affirmed the value of disclosure laws, to fully inform the electorate about who is "speaking" and to avoid confusion. And the constitutionality of state disclosure laws has repeatedly been upheld by the U.S. Supreme Court (*viz. Doe v. Reed*, 130 S. Ct. 2811(2010); *Caperton v. A.T. Massey Coal Co.*, 129 S.Ct. 2252 (2009).).

HB 2174 will help to make it possible for Hawai'i voters to identify entities (whether traditional or not) that are spending money to influence elections through independent expenditures or electioneering communications. This is of tremendous benefit for an informed public, and it's the least we can do to help protect the integrity of the democratic process.

It is urgent that you pass HB 2174, and that it take effect as soon as possible.

Mahalo,

R. Elton Johnson, III

## **FINTestimony**

---

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, February 23, 2012 3:50 PM  
**To:** FINTestimony  
**Cc:** ndavlantes@aol.com  
**Subject:** Testimony for HB2174 on 2/24/2012 12:00:00 PM

Testimony for FIN 2/24/2012 12:00:00 PM HB2174

Conference room: 308  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Nancy Davlantes  
Organization: Individual  
E-mail: [ndavlantes@aol.com](mailto:ndavlantes@aol.com)  
Submitted on: 2/23/2012

**Comments:**

I'm sure I join with the majority of citizens, not only of Hawaii, but of the rest of the country, in abhorring the Citizens United decision that has allowed unlimited corporate spending in campaigns. Left unchecked without disclosure requirements keeps voters from knowing where all the money is coming from and where it is going. Our current disclosure laws are out of date in this post-Citizens United era. I urge the committee to pass this bill to ensure transparency.

Thank you for the opportunity to offer testimony.

Nancy Davlantes  
Kaneohe

## **FINTestimony**

---

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, February 23, 2012 11:50 AM  
**To:** FINTestimony  
**Cc:** paul.mckimmy@gmail.com  
**Subject:** Testimony for HB2174 on 2/24/2012 12:00:00 PM

Testimony for FIN 2/24/2012 12:00:00 PM HB2174

Conference room: 308  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Paul McKimmy  
Organization: Individual  
E-mail: paul.mckimmy@gmail.com  
Submitted on: 2/23/2012

**Comments:**

Citizens United was the worst thing possible for our already despicable campaign finance &quot;system&quot;. At the very least voters deserve to know where all the money is coming from and to whom

## **FINTestimony**

---

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, February 23, 2012 4:23 PM  
**To:** FINTestimony  
**Cc:** brenching@juno.com  
**Subject:** Testimony for HB2174 on 2/24/2012 12:00:00 PM

Testimony for FIN 2/24/2012 12:00:00 PM HB2174

Conference room: 308  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Brenda Ching  
Organization: Individual  
E-mail: [brenching@juno.com](mailto:brenching@juno.com)  
Submitted on: 2/23/2012

Comments: