



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

H.B. NO. 1147, RELATING TO CAMPAIGN SPENDING.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, February 5, 2013

TIME: 2:05 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Deirdre Marie-Iha, or Robyn Chun, Deputy Attorneys General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General supports the intent of this bill, which adds several forms of disclosure and transparency provisions into Hawaii's campaign finance laws. Campaign finance disclosure provisions are the laws that allow the Hawaii electorate to "follow the money" and determine which individuals, organizations or businesses are seeking to influence their vote. The Department believes that the bill has some significant practical and legal concerns if it is passed in its current form. For that reason, the Department recommends that the Committee pass this bill only with the amendments detailed below. These amendments are suggested for clarity, consistency, and to maximize the chances that the bill would survive a constitutional challenge if one is ever brought.

The purpose of this bill, generally, is to increase the disclosure requirements in Hawaii's campaign finance laws.¹ The most significant aspects of this bill add to Hawaii's campaign finance disclosure provisions by (1) creating a new form of disclosure for "top contributors" to big money SuperPACs, where the top contributors would be identified in the advertisements themselves, (2) adding to the information required in noncandidate committee reports, (3) creating a new form of reporting for late *expenditures*, where current law requires disclosure

¹ The Department notes that this bill is an improved reintroduction of H.B. 2174, H.D. 1, S.D. 1, from the 2012 session. H.B. 2174 was substantially amended and considered by both houses, but ultimately did not pass out of conference. Should this Committee pass this bill, the Department suggests that the legislative history reflect that H.B. 1147 is a continuation of the efforts made last session with (2012) H.B. 2174. Doing so will demonstrate that the legislative history of this measure, should it become law, actually spans two sessions.

only of late *contributions*, (4) adding to the information required in filings about electioneering communications (that is, advertisements run during the last few weeks before an election) and (5) increasing the disclosure required for corporations that engage in political spending by requiring all corporations to report as noncandidate committees and eliminating the current separate corporation reporting status, which has a lesser level of disclosure. In general, disclosure and transparency in campaign financing 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 concerns, internal inconsistencies, and drafting problems. Each of these are detailed below.

Need for Detailed Purpose Section and Legislative History.

Under the federal campaign finance case law, if any of the amendments made in this bill were ever subject to a constitutional challenge, the purpose section and legislative history would become very important in the State's defense of these laws. When campaign finance disclosure provisions are challenged under the First Amendment, it is the *government* that bears the burden of demonstrating that the law survives constitutional scrutiny, under an intermediate form of review called "exacting scrutiny." To help meet that burden, the Department *strongly* suggests that the purpose section be substantially expanded, to discuss why the additional disclosure (particularly the new top contributor provision) are necessary in Hawaii. The legislative history should reiterate the information in the expanded purpose section, and also include details from the 2012 election that support the need for additional disclosure. To accomplish this, the last paragraph of the purpose section (page 1, lines 10-16) should be omitted in favor of a more detailed discussion.²

Suggested Changes to "Top Contributor" Provision.

Section 2 of the bill would add a new form of disclosure into Hawaii's campaign finance laws, called a "top contributor" provision. This provision is limited to so-called "SuperPACs." A SuperPAC is a political committee (called a noncandidate committee in Hawaii) that makes

² The first paragraph of the purpose section contains a significant error. Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010), did not concern corporate *contributions*; it concerned corporate *independent expenditures*. The word "contributions" on page 1, line 6 should be replaced with "independent expenditures" to correct this error.

only independent expenditures. Independent expenditures are expenditures that are made by an individual or organization without coordinating with any candidate for office. Citizens United allowed unlimited corporate independent expenditures. Under the case law regarding independent expenditures that has developed since Citizens United, a SuperPAC may accept contributions of any size. Because a SuperPAC can accept contributions of any size, it offers a ready vehicle for wealthy individuals to pool their resources in support or in opposition to a candidate in a manner not permitted before Citizens United. Under section 11-391, HRS, the advertisements purchased by these SuperPACs contain only the name of the SuperPAC in the advertisement itself. SuperPACs are often given innocuous or vague names, so our existing disclosure requirements are insufficient to identify the true source of the funds in the advertisement as it reaches the public. Under existing law, SuperPACs must disclose the sources of their funds as other noncandidate committees do. However, regular noncandidate committee reports are filed relatively infrequently, and after the fact. This provision, if enacted, would require a big money SuperPAC to disclose the top sources of their funds in the advertisement itself. This would effect a substantial increase in disclosure for the advertisements undertaken by SuperPACs that receive sizable contributions.

As currently drafted, this additional level of disclosure in the advertisement would apply to noncandidate committees making only independent expenditures (that is, SuperPACs) that receive aggregate contributions of \$5,000 or more from a single contributor (called "top contributors") and require the noncandidate committee to identify the highest five of those top contributors in the advertisement. Disclosure laws are generally viewed as being constitutionally sound under the current federal case law. ***However, the Department feels that this threshold level (\$5,000) and the amount of contributors that must be identified (five) should be changed in order to strengthen the provision for purposes of withstanding a potential constitutional challenge.*** A constitutional challenge may become stronger when smaller-amount contributors are impacted, and when more contributors must be identified in the advertisement, which could potentially interfere with the advertisement's ability to deliver its message.

To strengthen the provision, therefore, the threshold level should be raised to \$10,000 and the number of top contributors identified in the advertisement should be reduced to three. The Campaign Spending Commission's data from the 2012 election demonstrates that doing so would

not substantially decrease the disclosure sought by this provision.³ The majority of big money SuperPACs in Hawaii operated with *far* larger contributors of funds than \$10,000, and typically the SuperPACs had a very small number of big money contributors. Because the lower threshold (\$5,000) and the higher number of contributors (five) in the current bill would not substantially increase disclosure while simultaneously potentially weakening the provision in the event of a constitutional challenge, the threshold amount for "top contributor" status should be raised to \$10,000,⁴ and the number of top contributors to be identified should be lowered to three.⁵

The top contributor provision also requires several amendments to improve the clarity and functionality of the provision and make it internally consistent with the rest of the bill. The Department therefore recommends these changes:

- The clause at the beginning of section 2 of the bill, which adds this new section into chapter 11, should specify that the addition is made to subpart H (governing advertisements) of part XIII (campaign finance) of chapter 11.
- The section title (page 2, lines 4-6) should be changed to something more accurate and descriptive. The section title should read, "Identification of certain top contributors to noncandidate committees making only independent expenditures."
- The phrase "posted on the Internet" (page 2, lines 9-10) should be replaced with "by electronic means," which is the phrase used elsewhere in the bill to describe electronic transmission of advertisements (see page 20, line 4, and page 21, line 12).
- The phrases "top contributors funding the advertisement" or "top contributors for an advertisement" appear in several places in this provision. This refers to the initial group

³ The Commission maintains a list of those noncandidate committees that made only independent expenditures during the 2012 election. This information is publicly available at <http://hawaii.gov/campaign/announcements/list-of-independent-expenditures-committees-for-the-2012-elections> (last visited February 1, 2013).

⁴ To accomplish this, every reference to \$5,000 should be replaced with \$10,000. References to "\$5,000" appear on page 3, lines 18 and 22, and page 5, line 15.

⁵ To accomplish this, every reference to "five" should be replaced with "three." References to five top contributors appear on page 2, lines 13, 19, and 21, page 3, lines 5, 10, 12 and 17, and page 4, lines 6, 7, 16, 17, and 18. The Department notes that "three" already appears in the bill in several locations, presumably from an earlier draft of the bill. (See page 2, line 14, page 3, line 1, and page 4, line 20).

of top contributors a noncandidate committee is required to identify in the advertisement: those contributors who contributed to the noncandidate committee *for the purpose of funding the advertisement*. Page 2, lines 13-17. The new section loses clarity and specificity because the "*purpose of funding the advertisement*" is not consistently repeated throughout the section. This specificity is critical because noncandidate committees are required to disclose *other* top contributors (that is, those who just contributed generally to the noncandidate committee, and *not* expressly for the purpose of funding the advertisement) if top contributors who contributed for the purpose of funding the advertisement cannot be identified. Page 2, lines 19-20. To make the section internally consistent, the phrases "top contributors funding the advertisement" and "top contributors for an advertisement" should be replaced with "top contributors who contributed for the purpose of funding the advertisement." This change should be made on page 2, line 19 and on page 3, lines 6 and 14. (The last amendment to page 3, line 14 will be unnecessary if the committee adopts the suggestion below that paragraph (a)(3) be omitted as redundant.)

- Paragraph (a)(2) governs when a noncandidate committee can identify only one or two top contributors who contributed for the purpose of funding the advertisement. As we read it, this paragraph requires the additional top contributors (for a total of three) be identified from the contributors to the noncandidate committee *generally*. This intent would be more clear by adding in the phrase "remaining one or two" into the first clause of paragraph two, on page 3, lines 7-8.
- Paragraph (a)(3) should be omitted as redundant. The requirement that a noncandidate committee identify top contributors to the committee generally if no top contributors for the purpose of funding the advertisement can be identified is already stated in paragraph (a)(1). Paragraphs (a)(4) and (a)(5) will have to be renumbered.
- The reference to the "noncandidate committee only makes independent expenditures" on page 4, lines 2-4 should be omitted. It is not necessary, since subsection (a) explicitly limits the application of the entire section to noncandidate committees that make only independent expenditures. Page 2, lines 11-12. In addition, this reference is confusing and inconsistent with the other provisions of chapter 11, HRS. Noncandidate committees

are generally subject to a \$1,000 aggregate contribution limit. Section 11-358, HRS. SuperPACs are excepted from this requirement due to federal case law that has developed since Citizens United. In other words, it is impossible for a noncandidate committee to receive contributions over \$1000 from a single contributor unless the noncandidate committee is a SuperPAC (a committee that makes only independent expenditures). The reference on page 4, lines 2-4, should be omitted.

- The hardship exception in subsection (c) needs to be clarified. As currently written, the "short duration" referenced on page 5, line 3 is confusing and potentially ambiguous, and appears to refer to the length of time it would take to list the top contributors. Page 5, lines 3, 7 and 8. As we read it, the "short duration" is meant instead to refer to advertisements of short duration, where including the list of top contributors would be burdensome, such as a very short radio advertisement. To address this, the first two sentences of subsection (c) should instead be clarified to read: "This section shall not apply to advertisements broadcast by radio or television, of such short duration that ~~if~~ including a list of top contributors in the advertisement ~~of a short duration~~ would constitute a hardship to the noncandidate committee paying for the advertisement. The commission shall adopt rules pursuant to chapter 91 to establish criteria to determine when ~~whether~~ including a list of top contributors in an advertisement of short duration ~~of a certain duration of the advertisement~~ constitutes a hardship to a noncandidate committee under this subsection."
- The last sentence of the hardship exception also should be changed to refer to this "subsection," not "section," because the hardship exception is governed by subsection (c). Page 5, lines 11. In addition, the last sentence of subsection (c) should be changed to refer to "this part" instead of "this chapter." Page 5, line 10. Chapter 11, HRS, governs several other election-related topics. Part XIII of chapter 11 is Hawaii's campaign finance laws.
- The definition of "top contributor," in addition to being changed to raise the \$5,000 threshold to \$10,000 (as detailed above), should be amended to refer to "this part" instead of "this section." Page 5, line 14. This is necessary because other parts of the bill refer to this new provision. Page 19, lines 11-12.

Drafting Changes Needed for Amendments to Noncandidate Committee Reports Section.

Section 5 of the bill amends section 11-335, HRS, which governs the contents of regular reports filed by noncandidate committees. These amendments incrementally expand the information required in these reports. Where the amendments refer to "candidates supported, opposed, or identified," the word "clearly" should be added, to make the amendments internally consistent with other uses of the word "identified" in the campaign finance laws. (See section 11-302, defining "clearly identified," section 11-341, using the phrase "clearly identifiable," and Hawaii Administrative Rules 3-160-3 (further defining "clearly identified" and including examples). The language would then say "candidates supported, opposed, or clearly identified." This change should be made on page 12, lines 3 and 12.⁶

Drafting Changes Needed for Late Expenditure Report Provision.

Section 7 of the bill creates a new report, called a late expenditure report. Under section 11-338, HRS, noncandidate committees are required to disclose late *contributions* made during the last days before an election. Section 7 would create a similar reporting requirement for late *expenditures*. These amendments require some drafting changes to remove inconsistencies. First, the word "clearly" should be added into the phrase "any candidate supported, opposed, or identified," on page 15, lines 13-14, and page 16, line 8, for the same reason noted above. Second, the reference to "contributions" on page 15, line 15 is an error; the new report would govern only late *expenditures*, and late contributions are already covered by existing subsection (a). For the same reason, the reference to contributions in new paragraph (c)(1) is an error. Paragraph (c)(1) (page 16, lines 1-3) should instead read "The amount and date of each expenditure made;". These small but important changes will make this provision internally consistent with the existing parts of section 11-338, HRS.

Drafting Changes Needed for Electioneering Communications Amendments.

Section 9 of the bill amends section 11-341, HRS, the provision that governs electioneering communications. "Electioneering communications" are advertisements made during the height of the election season, particularly the last 60 days before the general election. Under section 11-341, HRS, a disclosure report (called a statement of information) has to be

⁶ This section of the bill also contains two typographical errors. On page 12, lines 1-2, "electioneering communication" should be plural, and on page 12, line 16, "agency" should instead read "agent."

filed for electioneering communications within 24 hours. The amendments made by section 9 of the bill would increase the information required in disclosures filed for electioneering communications. These amendments requires a few changes for internal consistency. The reference to ballot issues on page 18, line 9, should be removed. By definition, electioneering communications concern only elections for office, not ballot measures. Section 11-341, HRS. In addition, the reference to "five top contributors" (referring to the new provision added by section 2 of the bill) should be changed to "three top contributors," for the same reasons stated above. Page 19, lines 11-12. Finally, because electioneering communications may be made by anyone, not just Super PACs (that is, noncandidate committees that make only independent expenditures), the reference to the top contributor provision should be clarified by adding "if applicable" to the end of paragraph (9). Page 19, line 12.

Legislative History Needed for Repeal of Section 11-332.

Section 11 of the bill 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, including SuperPACs) 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 organization, is subject to noncandidate committee reporting requirements if it meets the requirements*** (over \$1000 in contributions or expenditures under sections 11-302 and 11-321(g), HRS). In fact, because reporting as a noncandidate committee has a lower threshold under section 11-335, HRS (reporting triggered by any contributions or expenditures over \$1000 in the aggregate) than reporting as a corporation under section 11-332, HRS (reporting triggered by only contributions to a single candidate over \$1000), repealing the corporate reporting status in favor of using noncandidate committee status for all corporations will cause an *increase in the disclosure requirements for corporations*. 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 period.

The repeal of this provision may cause confusion, because independent expenditures by corporations are of great public concern since the United States Supreme Court's decision in Citizens United. For that reason, *the Department strongly suggests 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, and to increase the disclosure requirements applied to corporations, not to decrease disclosure obligations by corporations. Such a statement in the legislative history should eliminate any reading that this measure, if enacted, somehow reduces the reporting obligations of corporations.*

One Effective Date Necessary for Consistency.

As currently drafted, the bill would go into effect upon approval, with the bulk of the substantive provisions (sections 2-11) going into effect on November 5, 2014, which is the day after the 2014 general election. Page 24, lines 15-17. Other operative sections of the bill (sections 13 and 14) require the Campaign Spending Commission to make regulatory changes premised on the amendments made in the rest of the bill. The existing discrepancy in the effective dates would appear to require the Commission to act on statutory changes before they take effect. For consistency's sake, and for ease of administration, therefore, the entire bill should take effect on November 5, 2014.

The Department of the Attorney General urges the committee to pass this bill only with the amendments noted above.



STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION


235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

February 4 2013

TO: The Honorable Karl Rhoads, Chair
House Committee on Judiciary

The Honorable Sharon E. Har, Vice Chair
House Committee on Judiciary

Members of the House Committee on Judiciary

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

SUBJECT: **Testimony on H.B. No. 1147, Relating to Campaign Spending**

Tuesday, February 5, 2013
2:05 p.m., Conference Room 325

Thank you for the opportunity to testify on this bill. The Campaign Spending Commission ("Commission") supports the intent of this bill, but has a few comments about certain portions of the bill.

In section 2 of the bill, there is an inconsistency in the number of top contributors that need to be disclosed. For example, on page 2, lines 12-17, the bill refers to five top contributors but only requires the disclosure of the three contributors who made the greatest aggregate contributions to the noncandidate committee. This inconsistency is repeated on page 3, line 1 and page 4, line 20. The bill should pick one number, either three or five, and be consistent throughout the section.

Section 4 of the bill requires the Commission to create a "searchable database." As described in the bill at pages 9-10, the Commission, with the assistance of the Information Communication Services Division of the Department of Accounting and General Services, has already begun implementing a searchable database. Members of the public can go to data.hawaii.gov to search for contributions made to candidates and noncandidate committees from November 8, 2006 through November 6, 2012. Shortly, the Commission will be populating the database with data from all of the schedules that candidate and noncandidate committees must file electronically with the Commission to date.

Section 7 of the bill needs to be clarified. This section amends Hawaii Revised Statutes ("HRS") §11-338 by adding a late expenditures report. However, the amendment is confusing because, in addition to expenditures, the amendment also makes reference to contributions. Late

The Honorable Karl Rhoads
The Honorable Sharon E. Har
Members of the House Committee on Judiciary
February 4, 2013
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contributions are already covered by subsection (a) and (b) of §11-338. Late expenditures should be completely separate from late contributions. Thus, “contributions” should be deleted on page 15, line 9, and on page 16, lines 1-3 should be deleted.

In regard to section 11 of the bill, the Commission notes that the repeal of HRS §11-332 will increase disclosure, and therefore, transparency. Currently, corporations are only required to report contributions that aggregate over \$1,000 to a candidate. By repealing §11-332, corporations that reach the threshold for reporting as a noncandidate committee (more than \$1,000 in contributions or expenditures, in the aggregate) will have to report contributions they make that are more than \$100.

Finally, since the substantive amendments to HRS Chapter 11 take effect on November 5, 2014, the same effective date should be applied to sections 12-14.



House Judiciary Committee
Chair Karl Rhoads, Vice Chair Sharon Har

Tuesday 02/05/13 at 02:05PM in Room 325
HB1147– Relating to Campaign Spending

TESTIMONY
Carmille Lim, Executive Director, Common Cause Hawaii

Dear Chair Rhoads, Vice Chair Har, and members of the House Judiciary Committee:

Common Cause Hawaii supports HB1147. This bill includes a number of important elements to improve transparency and disclosure for campaign finance, with particular respect to independent expenditures and SuperPACs. We also provide suggested amendments on page 2 of this testimony.

This bill requires noncandidate committees to identify certain top contributors for advertisements; requires the campaign spending commission to maintain public records in a searchable database; and improves various other reporting requirements for noncandidate committees and others.

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 three 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.

The experience of the most recent elections shows the clear need for action by elected officials; 2012 was the year of the SuperPAC at the federal, state, and local levels. Here in Hawaii, new SuperPACs were formed and enormous quantities were expended on campaign advertising aiming to influence the voters.

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. With the recent growth of SuperPACs and independent expenditures, more disclosure is urgently needed. This bill includes important elements to improve this situation.

IMPORTANT ELEMENTS IN HB1147

There are several important elements included in the bill:

- **Disclosures on Advertisements** – Advertisements are currently required to include a message disclosing who has paid for the ad, but the names of SuperPACs may not give any real information to the viewers, listeners, or readers. This bill improves the disclosures on advertisements by requiring a listing of a SuperPAC’s five top contributors. Similar provisions have been included in various pending legislation in other states.
- **Noncandidate Committee Reporting** – This bill requires noncandidate committees to report additional information including the name of any candidate supported, opposed, or identified in any advertisements. Also, for independent-expenditure-only committees (“SuperPACs”), the bill requires certification that independent expenditures are not coordinated with the candidate.
- **Late Expenditures** – The current law already requires reporting of *late contributions* – donations given just before an election. Now that independent expenditures are gaining prominence, this bill would require noncandidate committees and other entities to report *late expenditures* as well.
- **Database** – This bill requires creation of a robust searchable database of all campaign report information. This will make the information more user-friendly for ordinary citizens. It is our understanding that the Campaign Spending Commission is already implementing this idea.
- **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 (currently, noncandidate committees are not required to file these reports).

PROPOSED AMENDMENT: Clarify disclosure for top five contributors

Section 2 requires non-candidate committees that are making only independent expenditures (i.e., SuperPACs) to disclose their five top contributors on their advertisements. This would include up to five top contributors who contributed \$5,000 or more for the purpose of running the ads or to the SuperPAC itself within the last 12 months.

It seems that there were errors in the revision and drafting process. In Section 2-1 and 2-2 of the bill, it incorrectly says “three” greatest aggregate contributions in two spots, but instead it should reflect *five* top contributors. For consistency and stronger disclosure, Common Cause Hawaii suggests amending the language from “three” greatest aggregate contributions... to “five” greatest aggregate contributions.

While we may not be able to completely eliminate the influence of “big money” in politics, we believe that improving the way campaign contributions and expenditures are reported, will help voters identify the source of campaign money.

Thank you for the opportunity to testify in support of HB1147, with amendments.



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COMMITTEE of the JUDICIARY

Rep. Karl Rhoads, Chair; Rep. Sharon Har, Vice-Chair

Tuesday, February 5, 2013; 2:05 PM; Conference Rm. 325

TESTIMONY on HB 1147

Wynn timer Hee, Legislative Committee Member, League of Women Voters of Hawaii

Chair Rhoads, Vice-Chair Har, and Members Belatti, Brower, Cabanilla, Carroll, Ito, Kawakami, Lee, Tsuji, Wooley, McDermott, and Thielen:

The League of Women Voters of Hawaii supports the intent of HB 1147, which would require noncandidate committees to identify certain top contributors for advertisements. We understand that a couple of editing corrections need to be made, that in two places "three" should be amended to "five": Section 2, Chapter 11(1) and Section 2, Chapter 11 (5)(b).

The intent of HB 1147 is to increase transparency in campaign spending, in light of the U.S. Supreme Court's 2010 Citizens United decision allowing corporations to spend unlimited amounts of money to influence elections.

The language of this bill seems a bit repetitive, but its intent is to make a distinction between "top contributors **for the advertisement**" and "top contributors **to the noncandidate committee**."

In today's unlimited campaign spending environment -- in order for citizens to "follow the money," so to speak -- we must require noncandidate committees that are making only independent expenditures to name up to five top donors (of \$5000 or more) to their advertisements or the non-candidate committee itself. For example, if a noncandidate committee has many contributors but none have contributed specifically for an advertisement, then the "top contributors to the noncandidate committee itself" need to be named in the advertisement.

The League of Women Voters of Hawaii believes that this is an important, much needed bill. We urge you to amend the language of this bill for clarity, if necessary, and to pass this bill.

Thank you for this opportunity to submit testimony.



HAWAII

AMERICANS FOR DEMOCRATIC ACTION

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MAILING ADDRESS

PO. Box 617
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February 4, 2013

TO: Chair Karl Rhoads, Vice Chair Sharon Harr,
Members of the House Committee on the Judiciary
FROM: Barbara Polk, Legislative Chair
Americans for Democratic Action/ Hawaii
SUBJECT: SUPPORT FOR HB 1147 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 1147. 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 an increasing influx of money into local political campaigns, especially by "SuperPACs". A SuperPAC is a political committee that operates without a contribution limit because they make only independent expenditures, that is, expenditures that are not coordinated with any candidate for office.

In Hawaii, as elsewhere, SuperPACs have accumulated significant funds from a single source or from very few sources. The existing disclosure requirements in campaign advertising are insufficient to identify the true source of the funds in the advertisement as it reaches the public.

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 source of campaign messages they receive. HB 1147 would increase the disclosure of the sources of election expenditures in a variety of ways.

Section 2. The requirement that political advertisements include the names of the top contributors to an advertisement or to the non-candidate committee was included in last year's bill and is clarified in this section. It defines "top contributors" as those who have made the 5 largest contributions over \$5000 for the purpose of the advertisement or to the non-candidate committee running the ad. The section spells out the wording of this notice under several different circumstances.

We recommend that this bill be amended on p. 5, line 14ff as follows: (e) For purpose of this section, "top contributor" means "a [contributor] person who has contributed an aggregate amount of \$5000 or more to a noncandidate committee within a twelve-month period prior to the purchase of an advertisement." This change clarifies that it refers not only to natural persons, but also to organizations, businesses and other entities.

Section 3 makes minor wording amendments to statute.

Section 4 requires that campaign spending reports by candidates or candidate committees be complete and accurate and be so certified by the chairperson and treasurer, and requires that such reports be available to the public on the Campaign Spending Commission's website as a searchable data base.

Section 5 requires that noncandidate committees report on both contributions received and contributions made (e.g., to a candidate or other noncandidate committee). This would allow the tracing of how money flows from one committee to another to influence elections. It also requires that reports of expenditures for advertisements or electioneering communications and any expenditure by a noncandidate committee making only independent expenditures include the names of candidates supported, opposed, or identified.

Section 6 adds the provision that expenditures to be rendered during the last three days prior to an election be included in the late expenditure report.

Section 7 requires that late expenditure reports also include both contributions received and contributions made and that contributions to a noncandidate committee include the name of any candidate supported, opposed or identified. It also requires that contributions or independent expenditures of more than \$500 in the period 14 days before an election be include in the late expenditure report.

Section 8 changes the language of current statute to ensure that the commission can collect fines from any person failing to file a complete report.

Section 9 requires that the currently required electioneering information reports include the names and titles of the executives or board of directors who authorized the expenditure, if it was made by a noncandidate committee, business entity, or an organization, and clarifies and expands other reporting requirements.

Section 10 clarifies the definition of an advertisement and adds required disclosures on the ads themselves.

Section 11 deletes the current "11-332 Filing Report by Corporations" to avoid confusion and remove redundancy in the statute. Corporations that donate to candidates, candidate committees or noncandidate committees or that make independent expenditures are already required to register as noncandidate committees and to abide by the provisions of the statute. No special section is needed.

Finally, we note that the brief description of the bill that appears on p. 25 is not consistent with the bill itself with respect to the implementation date. The last sentence should read, "Mandates the commission to implement rules for campaign spending consistent with campaign spending laws. Sections 2 through 11 to take effect on November 5, 2014." or words to that effect.

We strongly encourage you to pass this bill with the two amendments suggested.

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February 4, 2013

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415 South Beretania Street
Honolulu, HI 96813

Dear Representative Rhoads:

The Internet Alliance (IA), comprised of the leading Internet, communications and technology companies including AOL, Google, Facebook, Yahoo and VeriSign, fully support effective disclosure of the source of political advertisements, as it creates and promotes transparency among voters.

However, the disclosure requirements contained in HB 1147 inadvertently prevents campaigns from making full use of the Internet, especially when it comes to search engine, mobile media, or any other small display advertising methods.

During the hearing scheduled for February 5 we ask that you consider amending the bill to account for the differences between traditional media and advertising in the online world. This bill would require certain political committee ads, funded by anonymous donors, to clearly and conspicuously include in all publications and ads, the following disclaimer: "This communication has been funded by anonymous sources. It is the responsibility of the voter to determine the veracity of the statements being made and the true character of the organization behind this communication." This applies to ads published or distributed through the internet.

Such a disclaimer would be largely impractical in common online ad displays including search engine result pages, text messages or messages appearing on mobile media such as cell phones or iPads, which all have limitations on the amount of text that can be displayed.

Internet Alliance members believe this bill can be amended to simultaneously give candidates an opportunity to use online social media to reach out to constituents and potential voters while still allowing for such online advertising venues.

In 2010, both Florida and Maryland addressed this issue by including language in their election laws that allow candidates to take advantage of the unique benefits enabled by online political advertising while still complying with state election laws. In particular, Florida and Maryland made exceptions to state disclosure laws for:

- Text ads that do not exceed 200 characters and have a link that directs users to another Internet website that contains the required disclosures; and
- Small display ads “where compliance with the requirements [are] not reasonably practical due to the size of the graphic or picture link and the link directs the user to another Internet website that complies . . .”

Both of these laws still require prominent disclosures from the sponsors of political advertisements, while allowing small display ads to provide a hyperlink to a landing or home page which prominently displays the required information. This assures that anyone wishing to find out who paid for a particular ad may do so by simply clicking on the link.

As you know, the challenge for adopting laws and regulations is language that can adapt to the Internet, a medium that is ever-evolving. New internet products and services are created and changed almost daily. By including the language suggested above, we believe the bill will take these new forms of communication into account.

Thank you for taking the time to look at this issue. I am available any time to answer questions or put you in touch with individual members for further discussions.

Sincerely,

Tammy Cota

Tammy Cota

cc: House Judiciary Committee members



76 North King Street, Suite 203
Honolulu, Hawai`i 96817
Phone: 533-3454; E: henry.lifeoftheland@gmail.com

COMMITTEE ON JUDICIARY
Rep. Karl Rhoads, Chair
Rep. Sharon E. Har, Vice Chair

DATE: Tuesday, February 05, 2013
TIME: 2:05 p.m.
PLACE: Conference Room 325

HB 1147 Campaign Spending

Strong Support

Aloha Chair Rhoads, Vice Chair Har and Members of the Committee

My name is Henry Curtis and I am the Executive Director of Life of the Land, Hawai`i's own energy, environmental and community action group advocating for the people and `aina for over four decades. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

HB 1147 states: *The legislature finds that the State has a duty to the residents of Hawaii to ensure that information concerning campaign contributions and expenditures is readily available to and easily accessible by the public. Disclosure is now more important than ever to the election process in light of the dramatic changes in policy regarding corporate contributions as reflected in the recent decision of the United States Supreme Court in Citizens United v. Federal Election Commission, 130 S. Ct. 876 (2010).*

Accordingly, the purpose of this Act is to: (1) Increase transparency in campaign spending and accessibility to information on campaign contributions and expenditures; and (2) Remove redundancy and eliminate possible confusion with respect to the status of corporations under state campaign finance law.

Life of the Land believes strongly in truth, transparency and accountability. It's time to be honest about lobbying.

Trust in government is at an all--time low. Hawai`i's unique cultural and environmental resources are at risk. We are concerned that public health and safety could be compromised by misleading campaigns pushed by special interest groups.

Transparency, accountability, and public participation are the hallmarks of a vibrant democracy. We, the communities of Hawai`i nei, have a right to be told the truth and to meaningfully participate in our democracy.

Restoring integrity to government requires us to share information openly with the public so the people can make informed decisions.

A lack of transparency results in distrust and a deep sense of insecurity.

- Dalai Lama

A basic tenet of a healthy democracy is open dialogue and transparency.

- Peter Fenn

"The most important about thing transparency is the clarity of the public's understanding of our intentions."

-Jeffrey Lacker

The elephant in the room is the issue of transparency."

-Michael Froomkin

"Perhaps it's time to bring the process into a new decade with more transparency."

-Deborah Pryce

Goals of the Transparency In Government Program¹

Goals of the Transparency in Government Program include, but are not limited to the following:

- Enhancing individuals understanding of and access to federal financial information sources.
- Providing a mechanism for individual citizens to provide oversight to Federal revenue sources and spending.
- Improving communication between the citizen and federal government officials including legislative, executive, and judicial branch organizations.
- Identifying improvements in reporting and access to financial information that are important to the public.
- Develop training programs for the public to better understand the operations of the federal government and access to information regarding its operation and management.
- Establish a feedback mechanism for the public to request information regarding the operation and management of the federal government.

"A popular government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or, perhaps, both." Pres. James Madison, August 4, 1822

"Press releases tell us when federal agencies do something right, but the Freedom of Information Act lets us know when they do not." Sen. Patrick Leahy, 1996

"When information which properly belongs to the public is systematically withheld by those in power, the people soon become ignorant of their own affairs, distrustful of those who manage them, and - eventually - incapable of determining their own destinies." Pres. Richard Nixon, 1972

"No one has demonstrated that an ignorant society is a safe society." Lucy Dalglish, executive director, Reporters Committee for Freedom of the Press, 2002

"...a nation that is afraid to let its people judge the truth and falsehood in an open market is afraid of its people." Pres. John F. Kennedy, 1962

¹ <http://fmsi.biz/FMSI/transparency/home.html>

"When government begins closing doors, it selectively controls information rightfully belonging to the people." Judge Damon Keith, U.S. Sixth Circuit Court of Appeals

"...those who won our independence believed that public discussion is a political duty; and that this should be a fundamental principle of the American government." Justice Brandeis, *Whitney vs. California*, 1927
"The more that government becomes secret, the less it remains free."
James Russell Wiggins, newspaper editor, 1956

"We seek a free flow of information...we are not afraid to entrust the American people with unpleasant facts, foreign ideas, alien philosophies, and competitive values." John F. Kennedy, February 1962

"We must never forget that the free flow of information is essential to a democratic society." Pres. Clinton, veto of Intelligence Re-Authorization Bill, 2000

"Government ought to be all outside and no inside." Pres. Woodrow Wilson

"Democratic governance involves public debate and open decision-making; hence, the organization of interest groups, the free exchange of ideas, opinions and information is essential. Addressing the information and communication needs of the poor is also essential - the poor often lack information that is vital to their lives - information on basic rights and entitlements, information on public services, health, education, employment etc. They also lack visibility and voice to enable them to define policy priorities and access resources." United Nations Development Programme²

"Official information that enhances people's capacity to exercise their rights belongs in the public domain. This information must be accessible and understandable." -- United Nations Development Programme, Access Position paper.³

² <http://www.undp.org/oslocentre/citzpart.htm>, accessed 7 Sep. 2004.

³ http://www.undp.org/oslocentre/access_pos.htm, accessed 7 Sep 2004.

"I believe in open government. I've always believed in open government. I don't e-mail, however. And there's a reason: I don't want you reading my personal stuff." [...] "I don't think you're entitled to read my mail between my daughters and me." -- President George W. Bush (43) to the American Society of Newspaper Editors, 14 April 2005, repeating a claim made shortly after becoming president. [In fact, presidents' personal records are not subject to the Freedom of Information Act, and his personal e-mail would not be subject to the Presidential Records Act.] Access Reports 31(8) (20 April 2005):1.

"The only thing new in the world is the history you don't know." Pres. - Harry Truman

"The free exchange of information between the government and the people who create that government, the people who elect that government, is absolutely crucial to the democratic process. One of our greatest freedoms is to have a right to know what our government is doing." -- Courtney Cox, a Benton, Ill. attorney who won an appellate court ruling affirming that a FOIA requester is not required to explain why the information is being sought, 2005.

"A 'leak system' is ponderous, frustrating, costly and counterintuitive for a nation that values its democratic traditions. But it is absolutely essential as long as our leaders keep secrets that don't need to be kept, and as long as they can't resist putting themselves in the best light by keeping the rest of us in the dark." -- American Press Institute commentary, 2005.

"With the passage of the FOIA, the burden of proof shifted from the individual to the government. Those seeking information are no longer required to show a need for information. Instead, the 'need to know' standard has been replaced by a 'right to know' doctrine. The government now has to justify the need for secrecy." -- Introduction to the Citizens Guide on Using the Freedom of Information Act, published by the House Committee on Government Reform, September 2005

Please pass this important bill.

Mahalo

har2-Vincent

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, January 31, 2013 3:21 PM
To: JUDtestimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for HB1147 on Feb 5, 2013 14:05PM*

HB1147

Submitted on: 1/31/2013

Testimony for JUD on Feb 5, 2013 14:05PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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har2-Vincent

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 02, 2013 4:48 PM
To: JUDtestimony
Cc: jeannine@hawaii.rr.com
Subject: Submitted testimony for HB1147 on Feb 5, 2013 14:05PM

HB1147

Submitted on: 2/2/2013

Testimony for JUD on Feb 5, 2013 14:05PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Jeannine Johnson	Individual	Support	No

Comments: I support HB1147 and legislation that promotes fairness and would bring respectability back to politics in our Islands. The Supreme Court's decision gave organizations the same free-speech rights as individuals and opened a floodgate of corporate and union spending to influence U.S. elections. Pacific Resource Partnership's extreme spending in Hawai'i's 2012 elections was made possible by the U.S. Supreme Court's Citizens United decision, which allowed labor unions and corporations to spend virtually unlimited amounts to sway an election without fully revealing the source of their funding. Few organizations in Hawai'i politics can match PRP's financial resources. HB1147 is a step in the right direction. Mahalo.

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Cc: ndavlantes@aol.com
Subject: *Submitted testimony for HB1147 on Feb 5, 2013 14:05PM*

HB1147

Submitted on: 1/31/2013

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Submitted By	Organization	Testifier Position	Present at Hearing
Nancy Davlantes	Individual	Support	No

Comments:

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Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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Submitted By	Organization	Testifier Position	Present at Hearing
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Comments:

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TESTIMONY TO HOUSE JUDICIARY COMMITTEE

Chair Karl Rhoads, Vice Chair Sharon Har

Hearing: Tuesday, February 5, 2013 at 2:05 PM in Room 325

Bill: HB 1147 – Campaign Spending

Aloha Chair Rhoads, Vice Chair Har, and Committee Members,

I am testifying in **support of HB 1147**. This measure aims to improve our campaign finance disclosure laws and ensure transparency for SuperPACs and independent expenditures.

In the aftermath of the U.S. Supreme Court decision in *Citizens United v. FEC* and other court decisions, the floodgates have been opened to unlimited spending by corporations and unions. In 2012, we saw large sums of campaign money flowing via independent expenditures and SuperPACs.

The enormous problems for our democracy resulting from *Citizens United v. FEC* will be difficult to address quickly. National efforts are underway to push for major changes at the federal level, such as a U.S. constitutional amendment.

In the meantime, this bill represents a meaningful and practical step for the Hawaii legislature to significantly improve disclosure at the state level and boost transparency in the post-*Citizens United* era. This measure improves reporting for noncandidate committees (PACs and SuperPACs) and electioneering communications, requires an online searchable campaign finance database, and requires disclosure of top contributors in advertisements by SuperPACs.

Please note that a similar bill moved through the legislature last year (HB2174) and ultimately stalled in Conference Committee. Since that time, this bill has been further revised and improved.

Please pass this bill forward and take the first step toward fixing our democracy after *Citizens United*.

Mahalo,
Nikki Love

Resident of Kapahulu/Diamond Head

Email: CFRnikki@gmail.com

Phone: 286-2285