

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

ON THE FOLLOWING MEASURE:

**H.B. NO. 119, RELATING TO PROPOSING AN AMENDMENT TO THE HAWAII
CONSTITUTION REGARDING THE FREEDOM OF SPEECH.**

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Friday, January 25, 2013

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

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

Chair Rhoads and Members of the Committee:

The Department of the Attorney General understands that the intent of this bill is to address one aspect of the United States Supreme Court's decision in Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010). The Department, however, wishes to inform the Committee that it has serious concerns about the bill because this bill, unfortunately, will not have any actual legal effect and will not change the outcome of the Citizens United ruling. Consequently, the Department respectfully urges this Committee to hold or defer this bill.

Amending the text of the Hawaii Constitution is within the State's power, but doing so in this manner will have no legal effect in light of Citizens United. Even if this amendment passed and were ratified, the State of Hawaii would still be subject to the Citizens United ruling that corporations are entitled to make unlimited independent expenditures (that is, spend their own money without coordinating with any candidate for office) regarding political campaigns and elections. Our laws would still be subject to the Supreme Court's rulings about corporations and free speech under the federal constitution. Only an amendment to the federal constitution—or a subsequent, overruling decision from the United States Supreme Court—can undo the Citizens United decision. (See the April 2012 letter attached, where our office joined a group of State Attorneys General requesting that a federal constitutional amendment be proposed.)

The Department also raises other serious concerns about this bill. First, the wording proposed appears to limit the state constitutional right of freedom of speech to "natural persons."

Page 1, lines 14-15. If legally effective, this would mean that all organizations would be denied the right of free speech under our State Constitution, not just corporations. This would include organizations like the Sierra Club, the ACLU, Planned Parenthood, Hawaii Family Forum, and any number of other organizations on a wide variety of topics. The Department believes that curtailing the State constitutional right of free speech in such a broad manner may be an unintended consequence of this measure.

Second, even if it were legally effective, the wording proposed does not fully address the consequences of the Citizens United decision. One of the most significant post-Citizens United developments is the advent of so-called "SuperPACs," which, generated an enormous amount of political advertising during the 2012 election, both in Hawaii and nationally. SuperPACs are political action committees (called noncandidate committees in Hawaii) that operate without a contribution limit. Because they can accept contributions of any size, SuperPACs offer a ready vehicle for wealthy individuals to pool their resources in a manner not permitted before Citizens United. The legal principle from Citizens United that allowed the development of SuperPACs does not depend on the First Amendment status of corporations. Instead, it is based on the Supreme Court's conclusion in Citizens United that independent expenditures (i.e., political spending made without coordinating with any candidate for office) do not corrupt the political process. Because the proposed amendment does not address the status of independent expenditures, the change to the Hawaii Constitution would not address SuperPACs, even if this amendment could have legal effect on its own.

Finally, the Department also has concerns that this measure, if placed on the ballot, may confuse the public, by creating the impression that the measure would be legally effective to address and overturn the Citizens United ruling. Because the measure would not have such a legal effect, such an impression would be misleading.

April 4, 2012

The Honorable Harry Reid
Senate Majority Leader
522 Hart Senate Office Building
Washington, DC 20510

The Honorable Mitch McConnell
Senate Minority Leader
317 Russell Senate Office Building
Washington, DC 20510

The Honorable John Boehner
Speaker of the House
H-232, The Capitol
Washington, DC 20515

The Honorable Nancy Pelosi
Minority Leader
235 Canon House Office Building
Washington, DC 20515

RE: Amending the United States Constitution to Reverse the United States Supreme Court Decision in *Citizens United v. Federal Election Commission*

Dear Senate and House Leadership:

We, the undersigned state Attorneys General, are writing to urge you to amend the Constitution to reverse the United States Supreme Court decision in *Citizens United v. Federal Election Commission*.

Reversing this troubling decision would give Congress the power to ensure that the voice of the American people is not diluted or trampled on by corporations under the auspices of the First Amendment, and that the people have the ability to participate freely and equally in self-government.

As you are aware, in January 2010 the Supreme Court handed down its decision in *Citizens United v. Federal Election Commission*, 558 U.S. ___, 130 S.Ct. 876 (2010). The case overturned elements of the Bipartisan Campaign Reform Act of 2002 (also known as the "McCain-Feingold Act" or "BCRA") pertaining to the corporate financing of electioneering communications in the run-up to primary and general elections. The Supreme Court ruled that these restrictions on corporate political spending violated the First Amendment's free speech protections, thereby allowing corporations to spend unlimited amounts of money on elections.

In effect, the *Citizens United* decision overturned a century of jurisprudence, dating back to the Tillman Act of 1907, which supported Congressional authority to restrict corporate political spending on federal elections. With respect to the BCRA, the decision directly overrules key provisions of *McConnell v. Federal Election Commission*, 540 U.S. 93 (2003), which upheld the BCRA provisions that prevented direct expenditures by corporate entities on electioneering communications. Importantly, *Citizens United* kept intact other critical rulings in *McConnell* regarding disclosure requirements. However, by its decision the Court gave corporations the same rights under the First Amendment as individuals, and thereby severely limited Congress's power to regulate corporate political spending and invalidated bipartisan, democratically-enacted restrictions on corporate behavior.

The *Citizens United* case was of extreme interest to advocates for and against restrictions on unabashed corporate political spending. As a result, a large number of amicus briefs were



Jack Conway
Attorney General of Kentucky



Martha Coakley
Attorney General of Massachusetts



Jim Hood
Attorney General of Mississippi



Steve Bullock
Attorney General of Montana



Gary King
Attorney General of New Mexico



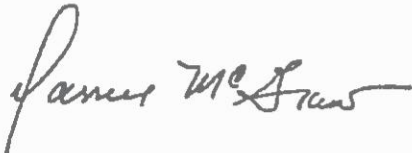
Eric T. Schneiderman
Attorney General of New York



Peter F. Kilmartin
Attorney General of Rhode Island



William H. Sorrell
Attorney General of Vermont



Darrell McGraw
Attorney General of West Virginia



Committee: Committee on the Judiciary
Hearing Date/Time: Friday, January 25, 2012, 2:00 p.m.
Place: House Conference Room 325

Re: *Testimony of the ACLU of Hawaii in **Opposition** to H.B. 119, Proposing an Amendment to the Hawaii Constitution Regarding the Freedom of Speech*

Dear Chair Rhoads, Vice-Chair Har and Members of the Committee on the Judiciary:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in opposition to H.B. 119, Proposing an Amendment to the Hawaii Constitution Regarding the Freedom of Speech.

The purpose of this bill is to propose an amendment to the Hawaii Constitution limiting the First Amendment freedom of speech to natural persons. In short, any such proposal is unconstitutional and will surely be invalidated by the courts. It is well-settled under federal law that corporations are entitled to freedom of speech protections. The U.S. Supreme Court has recognized that First Amendment protection extends to corporations. *See, e.g., First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 778, n. 14 (1978); *Time, Inc. v. Firestone*, 424 U.S. 4484 (1976); *Doran v. Salem Inn, Inc.*, 422 U.S. 922; *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974).

The plethora of Supreme Court cases provide the floor of minimum protection that must be afforded by the states with respect to the corporations and the First Amendment. While the Legislature may seek to propose a Hawaii Constitutional amendment to expand these rights, it is barred from seeking an amendment that would limit this protection in any fashion.

The ACLU of Hawaii respectfully requests that the Committee defer H.B. 119.

Thank you for this opportunity to testify.

Sincerely,
Laurie A. Temple
Staff Attorney
ACLU of Hawaii

About the American Civil Liberties Union of Hawaii

American Civil Liberties Union of Hawaii
P.O. Box 3410
Honolulu, Hawaii'i 96801
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E: office@acluhawaii.org
www.acluhawaii.org

Chair Rhoads and JUD Committee Members
January 25, 2012
Page 2 of 2

The American Civil Liberties Union of Hawaii (“ACLU”) has been the state’s guardian of liberty for 47 years, working daily in the courts, legislatures and communities to defend and preserve the individual rights and liberties equally guaranteed to all by the Constitutions and laws of the United States and Hawaii.

The ACLU works to ensure that the government does not violate our constitutional rights, including, but not limited to, freedom of speech, association and assembly, freedom of the press, freedom of religion, fair and equal treatment, and privacy.

The ACLU network of volunteers and staff works throughout the islands to defend these rights, often advocating on behalf of minority groups that are the target of government discrimination. If the rights of society’s most vulnerable members are denied, everyone’s rights are imperiled.

American Civil Liberties Union of Hawaii
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49 South Hotel Street, Room 314 | Honolulu, HI 96813
www.lwv-hawaii.com | 808.531.7488 | voters@lwvhawaii.com

COMMITTEE on JUDICIARY

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

Friday, January 25, 2013, 2:00 PM

HB 119 PROPOSING AN AMENDMENT TO THE HAWAII CONSTITUTION REGARDING THE FREEDOM OF SPEECH.

Proposes a constitutional amendment to provide that freedom of speech applies only to natural persons.

REVISED TESTIMONY

Janet Mason, Vice President, and Wynnie Hee, Legislative Committee Member
League of Women Voters of Hawaii

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

The League of Women Voters of Hawaii offers comments only on HB 119 which proposes an amendment to our Hawaii Constitution to specify that freedom of speech shall apply only to natural persons.

The League is deeply committed to reforming our campaign finance system to enable candidates to compete more equitably for public office. In fact, we support public financing of elections and the public funding pilot project on the Big Island. Very simply, if freely spending money is free speech, we human persons are hard pressed to compete with corporate persons and their special interests and non-candidate committees.

In our 2012 elections, candidates for state and county offices reported spending a total of \$14.7 million. In addition, a single non-candidate committee spent \$3.65 million to influence the outcome of Honolulu's mayoral election. That's almost 25% of what state and county candidates spent altogether.

Nevertheless, specifying that rights protected by the Constitution are only those of natural persons, and not of corporations, might not have the effect amendment sponsors intend.

The League recognizes that legal persons such as corporations have a main duty to make a profit for their shareholders, and that nonprofit organizations such as the League of Women Voters have a mission to pursue our stated political mission. But this amendment

proposed in HB 119 would mean, that both for-profit and non-profit corporations could be excluded from any type of advocacy on behalf of their preferred candidate, and this type of overly broad limitation seems unreasonable

Thank you, Chair Rodes, for introducing this measure, to continue the public discourse on finding a suitable remedy to the situation the League of Women Voters actively opposes – i.e. the problem of unlimited campaign contributions.



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COMMITTEE on JUDICIARY

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

Friday, January 25, 2013, 2:00 PM

HB 119 PROPOSING AN AMENDMENT TO THE HAWAII CONSTITUTION
REGARDING THE FREEDOM OF SPEECH.

REVISED TESTIMONY

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

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

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amendment proposed in HB 119 would mean that both for-profit and non-profit corporations could be excluded from any type of advocacy on behalf of their preferred candidate, and this type of overly broad limitation seems unreasonable

Thank you, Chair Rhodes, for introducing this measure, to continue the public discourse on finding a suitable remedy to the situation the League of Women Voters actively opposes – i.e. the problem of unlimited campaign contributions.



House JUD Committee
Chair Karl Rhoads, Vice Chair Sharon Har

Friday, January 25, 2013 at 2:00 p.m. in Room 325
HB119 – Relating to Freedom of Speech

TESTIMONY IN SUPPORT
Carmille Lim, Executive Director, Common Cause Hawaii

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

Common Cause Hawaii supports HB119, which proposes an amendment to article I, section 4, of the Constitution of the State of Hawaii, to provide that the freedom of speech shall be extended only to natural persons, and not to a business entity.

This proposed amendment would send a strong signal to Congress that we, the people of Hawaii, believe that freedom of speech should only apply only to natural persons.

And, in the event we do overturn *Citizens United* federally, HB119's proposed amendment would prevent corporations from making the same arguments in state court.

Thank you for the opportunity to testify in support of HB119.

TESTIMONY TO HOUSE JUDICIARY COMMITTEE

Chair Karl Rhoads, Vice Chair Sharon Har

Hearing: Friday January 25, 2013 at 2:00 PM in Room 325

Bill: HB 119 – Freedom of Speech for Natural Persons

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

I am testifying in **support of HB 119**.

This measure aims to address the appalling 2010 U.S. Supreme Court decision in *Citizens United v. FEC* and other court decisions which opened the floodgates to unlimited spending by corporations and unions. The rationale for these decisions was based on the absurd notion that a corporation is a “person” with the same free speech rights as human beings.

Numerous polls have shown that an overwhelming majority of Americans disagree with the *Citizens United* decision, and there is a growing movement nationwide calling for a U.S. constitutional amendment to overturn *Citizens United*. In Hawaii, a Civil Beat poll found that an overwhelming majority of Hawaii voters would support a U.S. constitutional amendment on this issue (see “Civil Beat Poll: Hawaii Voters Support Limiting Political Donations” by J. Temple, posted January 5, 2012).

While reforms are needed at the federal level to fully address the problem, a state-level constitutional amendment would send a powerful message and strengthen the growing national movement for reform.

Please note that the major constitutional/legal changes needed at the federal level could take many years (even decades) to put into place. In the meantime, additional reforms can be enacted now at the state level. I ask the JUD Committee to also consider bills that can make an impact immediately at the state level – such as greater disclosure for SuperPACs and independent expenditures, addressed in HB 1147.

Mahalo,
Nikki Love

Board member, Common Cause Hawaii
Resident of Kapahulu/Diamond Head
Email: CFRnikki@gmail.com
Phone: 286-2285



HAWAII
AMERICANS FOR DEMOCRATIC ACTION

OFFICERS

Guy Archer, President
Juliet Begley, Vice-President
Fritz Fritschel, Treasurer
Chuck Huxel, Secretary

DIRECTORS

John Bickel
Karin Gill
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Tom Horton
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Barbara Polk

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Josh Frost (Alt)
Marsha Schweitzer (Alt)
PO. Box 617
Honolulu
Hawai'i 96822

January 24, 2013

TO: Chair Karl Rhoads, Vice Chair Sharon Har and Members
House Judiciary Committee

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

SUBJECT: SUPPORT FOR HB 119 RE: Hawaii Constitutional Amendment on Freedom of Speech

Thank you for introducing this bill. Americans for Democratic Action/Hawaii strongly supports it. In the past century plus, US courts have gradually given corporate and other artificial entities the rights of natural persons, clearly never intended by the framers of the US Constitution. Although there is a nationwide effort to amend the US Constitution, it is important to take whatever steps are available at a state level to make sure that the rights of artificial entities are determined through legislative processes, rather than being whole-sale granted by a clause of the constitution.

The proposed amendment would apply only to speech rights granted by the Hawaii Constitution, while more extensive rights would still be available under the current interpretation of the US Constitution until such time as it is amended. However, this amendment would make clear that provisions unique to our constitution do not apply more widely to artificial entities.

We encourage passage of this bill.



Democracy Under the Rule of Law is Based on Public Access

January 23, 2013

House Committee on Judiciary
Hawai'i State Legislature

Re: HB119, Proposing an Amendment to the Hawaii Constitution Regarding the Freedom of Speech
Hearing: Friday, January 25, 2013, 2:00 PM, Conference Room 325

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

Thank you for the opportunity to offer our testimony in strong **support** of HB 119. We would argue that this is a common sense measure. One would think that it goes without saying that when the Constitution of Hawai'i refers to the freedom of speech (and the freedom to exercise religion, and to assemble, and to petition the government for redress of grievances), it is the freedom of human beings, of natural persons, that are thus affirmed. But recent history makes it clear that one must be explicit about such things.

Natural, human persons can mediate their own self interest with the interest of others. Our speech and action comes from this crucible of human consciousness. Artificial persons, and in particular for-profit entities such as business corporations, however, exist to make a profit, and indeed are typically required to further this narrow purpose for their shareholders.

When the country's highest court effectively conflates natural and artificial persons, and equates money with speech, our democratic process is threatened by an unprecedented tsunami of corrupting special interest money. As you know, common sense restrictions on such influence have been removed by the U.S. Supreme Court in its 2010 *Citizens United v. FEC*, 130 S.Ct. 876 ruling and other decisions.

By simply stating the obvious, HB 119 helps to defend the fundamental integrity of our constitutional democracy. Please pass this important bill.

Mahalo,

R. Elton Johnson, III
Open Law Alliance



46-063 Emepela Pl. #U101 Kaneohe, HI 96744 · (808) 679-7454 · Kris Coffield · Co-founder/Legislative Director

**TESTIMONY FOR HOUSE BILL 119, PROPOSING AN AMENDMENT TO THE
HAWAII CONSTITUTION REGARDING THE FREEDOM OF SPEECH**

**House Committee on Judiciary
Hon. Karl Rhoads, Chair
Hon. Sharon E. Har, Vice Chair**

**Friday, January 25, 2013, 2:00 PM
State Capitol, Conference Room 325**

Honorable Chair Rhoads and committee members:

I am Kris Coffield, representing the IMU Alliance, a nonpartisan political advocacy organization that currently boasts over 150 local members. On behalf of our members, we offer this testimony in strong support of House Bill 119, which proposes an amendment to the Hawaii State Constitution regarding the freedom of speech.

In its now-infamous 2010 ruling in *Citizens United v. Federal Election Commission* (558 U.S. 310), the United States Supreme Court upheld the rights of corporations and labor unions to make unrestricted political expenditures under the First Amendment. To quote President Barack Obama's assessment of the ruling, the decision effectively "gives special interests and their lobbyists even more power in Washington, while undermining the influence of average Americans who make small contributions to support their preferred candidates." Since the ruling, billions of dollars have been spent to influence elections via independent-expenditure only committees, more commonly known as "Super PACs," which may engage in unlimited spending (outside of direct campaign or party contributions), while fundraising without any legal limit on donation amount. Though *Speechnow.org v. Federal Election Commission* officially sanctioned the creation of Super PACs, *Citizens United* held that, for purposes of establishing a "compelling government interest" of corruption sufficient to justify government limitations on political speech, "independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption," providing the legal basis for the *Speechnow* ruling.

Make no mistake: *Citizens United* has paved the way for plutocratic campaign finance corrosion, subordinating the interests of everyday citizens to the will of America's economic elite. According to the Center for Responsive Politics, the top 100 individual Super PAC donors comprised just 3.7 percent of contributors in the 2011-2012 election cycle, but 80 percent of the total money raised by such entities. By comparison, approximately 0.5 percent of Super PAC

money was donated by publicly traded corporations. Hawaii not been impervious to Super PAC infiltration. Pacific Resource Partnership, a collaborative venture between the Hawaii Carpenter's Union and unionized construction companies, spent more than \$3 million on local mayoral and city council races, largely without donor disclosure and primarily on misleading attack ads—two qualities that typify Super PAC spending.

We note that corporate personhood did not begin with *Citizens United*. In 1818, the U.S. Supreme Court decided *Dartmouth College v. Woodward* (17 U.S. 518) concluding: "The opinion of the Court, after mature deliberation, is that this corporate charter is a contract, the obligation of which cannot be impaired without violating the Constitution of the United States." Seven years later, the Supreme Court decided *Society for the Propagation of the Gospel in Foreign Parts v. Town of Pawlet*, in which an English corporation dedicated to missionary work, owning land in the U.S., sought to protect its rights to that land under colonial-era grants against an effort by Vermont to revoke the grants. Justice Joseph Story, writing for the Court, explicitly extended the same protections to corporate-owned property as it would have to property owned by natural persons. Then, in the 1886 case *Santa Clara v. Southern Pacific*, the Chief Justice of the Supreme Court openly opined that the Fourteenth Amendment's equal protection clause guarantees constitutional protections to corporations in addition to natural persons, and that oral arguments should focus on other legal issues. Historically, the 14th Amendment has not insulated corporations from government regulation any more than it relieves individuals from all regulatory obligations. This is not because corporations are not protected under the Fourteenth Amendment, however, but because the Fourteenth Amendment has been held to permit regulations that have been questioned. At the same time, we contend that further "personalizing the impersonal," as *Citizens United* does, consolidates political power in the hands of exclusive, rather than purely collective, groups, disenfranchising those who, in an era of increasing socioeconomic inequality, are abjected from quasi-aristocratic clubhouses and boardrooms.

In his dissent to the majority ruling in *Citizens United*, U.S. Supreme Court Justice John Paul Stevens lamented that, "At bottom, the Court's opinion is thus a rejection of the common sense of the American people, who have recognized a need to prevent corporations from undermining self government since the founding, and who have fought against the distinctive corrupting potential of corporate electioneering since the days of Theodore Roosevelt...While American democracy is imperfect, few outside the majority of this Court would have thought its flaws included a dearth of corporate money in politics." We urge lawmakers to heed Stephens' warning and enact measures to promote electoral equality and transparency. Mahalo for the opportunity to testify in strong support of this bill.

Sincerely,
Kris Coffield
Legislative Director

IMUAlliance

har2-Vincent

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, January 24, 2013 9:00 PM
To: JUDtestimony
Cc: Karibenes@gmail.com
Subject: Submitted testimony for HB119 on Jan 25, 2013 14:00PM

HB119

Submitted on: 1/24/2013

Testimony for JUD on Jan 25, 2013 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Kari	Individual	Oppose	No

Comments: Aloha Chair and Members of the Judiciary Committee, House Bill 119 does not provide a purpose to why businesses's first amendment right should be prohibited, thus it is unfair and not be passed. As members of this committee understand that you can be a legislature representing your constituents, I don't see what a business can't represent their employees interests. Thank you for allowing me to testify, and thank you for providing the service of online participation. Kari Benes Kaimuki

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: Thursday, January 24, 2013 6:25 PM
To: JUDtestimony
Cc: inunyabus@gmail.com
Subject: Submitted testimony for HB119 on Jan 25, 2013 14:00PM

HB119

Submitted on: 1/24/2013

Testimony for JUD on Jan 25, 2013 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Elaine D.	Individual	Support	No

Comments: Aloha Legislators, Thank you for proposing such a forward thinking amendment. If the Constitution is to be touched, this bill is a good example of why it should. A very important amendment that supports the freedom of speech apply only to natural, living, breathing persons. If a corporation could cry, bleed, give birth, feel pain or have a soul we wouldn't need this amendment. Unfortunately we have lost our way in society and need to be reminded through our Constitutions and codes of conduct that corporations ARE NOT people. So that there is no misunderstanding for voters as to the meaning of "natural persons" as someone might interpret this question as something to do with a 'naturalized' citizen because it not a common everyday reference, please amend this Constitutional question to read: "Shall the Constitution of the State of Hawaii be amended to provide the freedom of speech only to natural persons and not corporations?"

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: Thursday, January 24, 2013 12:09 PM
To: JUDtestimony
Cc: ndavlantes@aol.com
Subject: *Submitted testimony for HB119 on Jan 25, 2013 14:00PM*

HB119

Submitted on: 1/24/2013

Testimony for JUD on Jan 25, 2013 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Nancy Davlantes	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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TO: THE HOUSE JUDICIARY COMMITTEE
Friday, January 25, 2013, 2:00 p.m.

TESTIMONY ON HOUSE BILL NO. 119, PROPOSING AN AMENDMENT TO THE HAWAII CONSTITUTION
REGARDING THE FREEDOM OF SPEECH

TO THE HONORABLE KARL RHOADS, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is David Monk, a retired resident of Kalama Valley, testifying on my own behalf. Thank you for hearing this bill. I urge you to support its passage.

As a concerned citizen, I am actively engaged in promoting an amendment to the U.S. Constitution, the intent of which is similar to this measure, in that it would protect the ability of the state to regulate campaign spending, in particular spending by corporations and other artificial entities.¹ Under the U.S. Supreme Court's *Citizens United* decision in 2010, limits on corporate political spending have essentially been thrown out nationwide, contributing to an ever-growing avalanche of money, spent primarily on advertising, which threatens to drown out the voices of citizens under a non-stop barrage of messages from big, well-funded, narrow interests.

States are not immune from the effects of this decision. A long-standing state law limiting campaign spending in Montana, which had been put in place in response to blatant corruption of the electoral process by powerful corporate interests a century ago, and which had ever since effectively neutralized the toxic impact of this corruption, was overruled last year by the U.S. Supreme Court, citing its own *Citizens United* and related decisions.²

Even before these blows to regulation of campaign spending at both the federal and state levels, candidates for office, in order to remain competitive, had to devote unreasonable amounts of time and effort to constant fundraising. Since the 2010 decision, the possibility exists that an entity seeking to advance narrow self-interest in conflict with the public good could throw so much money into a race as to overwhelm any opposition. Potentially, even the threat to do so could move an incumbent or challenger to back away from principled positions in the face of likely electoral defeat.

Because of the rigid position taken by the Supreme Court, to reverse the pernicious effects of *Citizens United* and other, related decisions will require not just a legislative but a constitutional response.

The Hawaii State Legislature has previously passed four resolutions in support of action at the federal level to address this issue: House Concurrent Resolution 282 in 2010, House Resolution 44 in 2011, House Resolution 5 in 2012, and Senate Resolution 68 in 2012.³ A Civil Beat poll found overwhelming support among Hawaii voters for a constitutional amendment.⁴ The Honolulu City Council passed a resolution in 2012 calling for a similar amendment to the U.S. Constitution.⁵

Corporations differ from natural persons in many ways, some of which confer significant advantages in the pursuit of profit: they are effectively immortal, they cannot be jailed for criminal offenses, and they are required to act in the best interests of their shareholders, regardless of competing interests of citizens, the state, or other artificial entities. As artificial creations, they should not be inherently entitled to claim all the rights of natural persons, for whose benefit and protection the federal and state Constitutions were adopted.

This proposed amendment to the State Constitution will inoculate the state against efforts to cite a constitutional right of free speech by corporations as a basis for attacking campaign spending regulations, such as we have seen nationally and in other states.

Thank you for your attention to this important matter.

Respectfully submitted,

David Monk
dbmonk49@yahoo.com

¹For more information about efforts nationwide, please see www.amend2012.org.

²American Tradition Partnership, Inc. v. Bullock: <http://www.supremecourt.gov/opinions/11pdf/11-1179h9j3.pdf>

³Links to Hawaii State Legislature resolutions:

HCR282

http://www.capitol.hawaii.gov/Archives/measure_indiv_Archives.aspx?billtype=HCR&billnumber=282&year=2010

HR44

http://www.capitol.hawaii.gov/Archives/measure_indiv_Archives.aspx?billtype=HR&billnumber=44&year=2011

HR5 http://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=HR&billnumber=5

SR68 http://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=SR&billnumber=68

⁴Article on Civil Beat poll: <http://www.civilbeat.com/articles/2012/01/05/14419-civil-beat-poll-hawaii-voters-support-limiting-political-donations/>

⁵Honolulu City Council Resolution 12-207, CD1:

<http://www4.honolulu.gov/docushare/dsweb/Get/Document-129924/RES12-207.htm>