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STATE OF HAWAII  
CAMPAIGN SPENDING COMMISSION

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February 11, 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 *Kei*  
Campaign Spending Commission

SUBJECT: **Testimony on H.B. No. 596, Relating to Campaign Finance**

Tuesday, February 12, 2013  
2:05 p.m., Conference Room 325

Thank you for the opportunity to testify on this bill. The Campaign Spending Commission ("Commission") opposes this bill.

This bill amends Hawaii Revised Statutes §11-335 by expanding the disclosure required in noncandidate committee reports. This bill would require the disclosure of the candidate "supported, opposed, or otherwise intended to be influenced by any expenditure" of the noncandidate committee filing the report.

The term "influence" may be unconstitutionally vague. See Buckley v. Valeo, 424 U.S. 1 (1976). Although the potentially vague phrase may be deleted from this bill, another bill, H.B. No. 1147, already scheduled for decision-making by this committee on February 12, 2013 at 2:00 p.m., both increases the disclosure requirements for noncandidate committees, including those solely making independent expenditures (i.e., Super PACs), in a more comprehensive manner<sup>1</sup> and does not appear to present a vagueness concern.

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<sup>1</sup> See, section 2 (requiring identification of top contributors in advertisements), section 5 (requiring identification of candidates supported or opposed by independent expenditures), section 7 (requiring late expenditures report), and section 9 (requiring identification of candidates supported or opposed by electioneering communication), of H.B. No. 1147.



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

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 596, RELATING TO CAMPAIGN FINANCE.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY

**DATE:** Tuesday, February 12, 2013

**TIME:** 2:05 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

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Chair Rhoads and Members of the Committee:

The Department of the Attorney General has concerns about this bill, which are detailed below. In addition, this bill largely duplicates amendments currently being considered in H.B. No. 1147, which is a more comprehensive campaign finance measure. The Department recommends that this bill either be amended to address the concerns detailed below, or be deferred if this Committee intends to advance H.B. No. 1147.

This bill seeks to expand the disclosure required in noncandidate committee reports. "Noncandidate committee" is Hawaii's term for what is commonly known as a political action committee. 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 bill may raise concerns that the terminology used is imprecise.

In particular, the use of the word "influence" in campaign finance laws has, in the past, raised potential concerns of vagueness. See Buckley v. Valeo, 424 U.S. 1 (1976). A vague phrase may raise concerns that the law violates the Due Process Clause of the United States Constitution because it is not sufficiently precise in describing what conduct is permissible, and what conduct is disallowed. In this bill this concern can be easily eliminated by removing the phrase "or otherwise intended to be influenced" from the bill's purpose section (page 1, line 7) and from the statutory amendments made in section 2 (page 2, lines 12-13). Removing this phrase would not make the purpose section or the statutory amendments ineffective, however,

because the words "oppose" and "support" would still remain in each provision. Importantly, in the context of campaign finance law, the words "oppose" and "support" have been upheld as sufficiently precise to withstand a due process challenge premised on vagueness. See McConnell v. Fed. Election Comm'n, 540 U.S. 93 (2003), *overturned on other grounds by* Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010). With this change, both the purpose section and the statutory changes in section 2 would be amended to read "The name of each candidate whose nomination for election, or election, to office is supported or opposed by an expenditure of the noncandidate committee." With this change, this provision would read in a manner consistent with existing provisions of Hawaii's campaign finance laws, including section 11-302, Hawaii Revised Statutes (HRS) (defining "advertisement"). As amended, the bill would still serve its apparent intent of expanding the disclosures made by noncandidate committees to include the names of candidates supported or opposed in the committee's advertisements. The Department recommends that this bill be passed only if this change is incorporated.

We note that H.B. No. 1147, which is currently scheduled for decision-making on February 12, 2013, addresses this same issue in a more comprehensive way. Section 5 of H.B. No. 1147 would make several amendments to the noncandidate committee reports, including adding a requirement that independent expenditures "shall include the name of any candidate supported, opposed, or identified." H.B. No. 1147, page 12, lines 10-12.<sup>1</sup> In addition to this change, section 5 of H.B. No. 1147 includes other cross-references to the electioneering communications provision, and requires an additional certification from noncandidate committees making only independent expenditures. Therefore, should this Committee desire to add to the disclosure requirements that apply to noncandidate committees, H.B. No. 1147 offers a more comprehensive method by which to do so.

For these reasons, the Department recommends that this Committee either (1) amend this bill to remove the use of the phrase "or otherwise intended to be influenced," or (2) defer this bill as unnecessary, if the Committee intends to pass H.B. No. 1147.

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<sup>1</sup> The Department's testimony on H.B. No. 1147 recommended that "clearly" be added into this provision, so it would read "supported, opposed, or clearly identified." This is necessary to make the amendments internally consistent with other parts of Hawaii's campaign finance laws. (See section 11-302, HRS, defining "clearly identified," section 11-341, HRS, using the phrase "clearly identifiable," and Hawaii Administrative Rules section 3-160-3 (defining "clearly identified" with examples).