

RECEIVED
HOUSE OF REPRESENTATIVES

2014 MAR -3 P 3:41

CHIEF CLERK'S OFFICE
 AMENDMENT TO HOUSE OF REPRESENTATIVES
 H.B. No. 1499, H.D. 1

OFFERED BY: 

DATE: _____

SECTION 1. House Bill No. 1499, H.D. 1, is amended by deleting its contents in its entirety.

SECTION 2. House Bill No. 1499, H.D. 1, is amended by inserting the following:

"SECTION 1. The legislature finds that House Bill No. 1499 was intended to amend the Hawaii State Constitution to address one aspect of the United States Supreme Court's controversial decision in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010). The legislature shares concerns about *Citizens United*, but has serious reservations about the measure in both its original version and the House Draft 1 version.

Unfortunately, the proposed constitutional amendment, if ratified, cannot have any practical effect. The State of Hawaii remains subject to the *Citizens United* ruling construing the federal Constitution, regardless of any amendment made to the Hawaii State Constitution. Consequently, the legislature declares that House Bill No. 1499, and its subsequent version, House Draft 1, cannot effectuate its intended purpose.

The legislature further finds that amending the text of the Hawaii State Constitution is within the State's power, but doing so in this manner will have no practical legal effect due to *Citizens United* and earlier case law from the United States Supreme Court, including *Buckley v. Valeo*, 424 U.S. 1 (1976), interpreting the federal Constitution. *Buckley* is the foundation of modern campaign finance case law. Among the many rulings in that case, the United States Supreme Court held that contributions and expenditures of money made for the purpose of influencing an election are entitled to the protections of the First Amendment. *Id.* at 15-17.

The federal Constitution is the supreme law of the land. Therefore, even if this measure, in its original form or in the form House Draft 1, was enacted and ratified into law, the State of Hawaii would still be subject to the ruling in *Buckley*, as well as the ruling in *Citizens United* that corporations are entitled to make unlimited independent expenditures regarding elections. Even if the Hawaii State Constitution was amended, state laws would still be subject to the United States Supreme Court's federal constitutional rulings about money used to influence elections. Only an amendment to the federal Constitution - or a subsequent overruling decision from the United States Supreme Court - can undo the *Citizens United*

decision or the broader proposition regarding First Amendment protections for contributions and expenditures under *Buckley*.

In addition, the legislature acknowledges that if this measure, in its original form or the House Draft 1 form, is placed on the ballot, it would create the impression that it would be legally effective to address and overturn the unpopular *Citizens United* ruling. Because the proposed amendment would not have such legal effect, this impression would be misleading.

Accordingly, the purpose of this measure, in the version House Draft 2, is to make this measure inoperative in light of *Taomae v. Lingle*, 132 P.3d 1238 (2005).

SECTION 2. This Act shall take effect upon its approval."

CARRIED

FAILED TO CARRY

WITHDRAWN

CHIEF CLERK, HOUSE OF REPRESENTATIVES