



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014**

ON THE FOLLOWING MEASURE:

H.B. NO. 1499, PROPOSING AN AMENDMENT TO THE HAWAII CONSTITUTION REGARDING THE FREEDOM OF SPEECH.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, January 28, 2014

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

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

Chair Rhoads and Members of the Committee:

The Department of the Attorney General understands that the intent of this bill is to amend the Hawaii Constitution to address one aspect of the United States Supreme Court's controversial decision in Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010). The Department shares the Committee's concerns about Citizens United, but has serious reservations about this bill. Unfortunately, the proposed constitutional amendment, if ratified, cannot have any practical legal effect. The State of Hawaii remains subject to the Citizens United ruling construing the *federal* Constitution, regardless of any amendment made to the Hawaii Constitution. 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 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 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 proposed amendment passed and was ratified, the State of Hawaii would still be subject to this ruling from Buckley, as well as the ruling from Citizens United that corporations

are entitled to make unlimited independent expenditures regarding elections.¹ Even if the State Constitution was amended, our laws would still be subject to the 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 from Buckley.

Second, we are concerned about the breadth of the provision as it applies to expenditures to "promote lobbying." Page 1, line 16. Read literally, this provision could be read to deny the State Constitution's free speech protections for all activities supporting lobbying, because those activities would involve "the expenditure of money[.]" Lobbyists are generally governed by a distinct set of laws. See chapter 97, Hawaii Revised Statutes.

Finally, the Department also has concerns that this measure, if placed on the ballot, may confuse the public. If placed on the ballot, this measure may 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 a legal effect, this impression would be misleading.

For these reasons, the Department of the Attorney General respectfully requests that the Committee hold this bill.

¹ "Independent" expenditures means when a person or organization spends their own money without coordinating with any candidate for office.



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STATE & LOCAL AFFAIRS DIVISION
DANIEL REID, HAWAII STATE LIAISON

January 27, 2014

The Honorable Karl Rhoads
Chair, House Judiciary Committee
Sent Via Email

Re: House Bill 1499 – OPPOSE

Dear Representative Rhoads:

On behalf of the Hawaii members of the National Rifle Association, I oppose House Bill 1499.

The freedom of speech like other rights guaranteed under both the US and Hawaii Constitutions are the safeguards that protect our nation and make it great. Seeking to narrow those rights and erode the very protections the Constitution seeks to protect is intolerable.

Thank you for your attention and I ask that you oppose this bill.

Cordially,

Daniel S. Reid
State Liaison

Cc: Members, House Judiciary Committee



Hawaii Rifle Association

State Affiliate of the National Rifle Association
Founded in 1857

January 27, 2014

Testimony on HB 1499
Before JUD, Tuesday, January 28, 2014, Rm325, 2pm
IN OPPOSITION

Hon. Chair and Members,

HRA opposes this bill to place limits on the 1st Amendment. This is a misdirected proposal in the name of election reform that attacks a constitutionally protected right. There are better ways.

We believe that an infringement on one portion of the Bill of Rights is an attack on all, including the 2nd Amendment.

We see this bill as an alarming threat that could readily be used to muzzle grass roots lobbying which is at the very core of our political system, “of the people, by the people, for the people.”

Thank you for the opportunity to testify on behalf of HRA.

Dr. Maxwell Cooper,

Legislative Liaison

225-6944

HB1499

Submitted on: 1/27/2014

Testimony for JUD on Jan 28, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
James Hochberg	Hawaii Family Advocates	Oppose	Yes

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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COMMITTEE ON JUDICIARY

Tuesday, January 28, 2014 at 2:00 pm
Conference Room 325

HB1499 Proposing An Amendment To The Hawaii Constitution Regarding The Freedom Of
Speech.

TESTIMONY

Beppie Shapiro for the League of Women Voters of Hawaii

Chair Rhoads, Vice-Chair Har, Members of the Committee:

The League of Women Voters of Hawaii supports HB 1499, which would amend Hawai'i's Constitution to remove expenditures intended to influence elections or promote lobbying, from the Constitution's protection of freedom of speech.

Following recent SCOTUS rulings, particularly the Citizen's United decision allowing unlimited independent expenditures supporting candidates for election, Hawai'i like other states has experienced troubling increases in expenditures to influence voters' perception of candidates. The organizations and individuals behind these expenditures are not providing unbiased information on candidates; rather they are attempting to control public policy in their own interests through promoting candidates likely to support those interests.

One of the key links in the chain of SCOTUS decisions which has led to Citizens United and its resulting distortion of elections funding, was the finding in Buckley v. Valeo (1976) that "spending money to influence elections is constitutionally protected free speech."

While Hawai'i cannot control the application in federal elections of standards defined by SCOTUS, HB1499 could preserve more democratic, less oligarchical elections for state and county offices. The League believes this bill would support the intent of "one person, one vote", which is foundational to American elections policy.

We urge you to pass this bill. Thank you for the opportunity to submit testimony.

HB1499

Submitted on: 1/25/2014

Testimony for JUD on Jan 28, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Will Best	Individual	Support	No

Comments: This constitutional amendment will make it much easier for our government to work on behalf of all the people of Hawaii. This amendment will greatly strengthen our democracy, and I strongly support it.

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HB1499

Submitted on: 1/26/2014

Testimony for JUD on Jan 28, 2014 14:00PM in Conference Room 325

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

Comments: I am in full support of this bill as a great first step to rescue our elections from the influence of money by specifying that money is not speech and the First Amendment does not guarantee any person--or corporation--to spend unlimited dollars to influence elections.

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HB1499

Submitted on: 1/25/2014

Testimony for JUD on Jan 28, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Polk	Individual	Support	No

Comments: Chair Rhoads--Thank you for introducing and hearing HB1499. The flood of money in politics as the result of recent US Supreme Court decisions is seriously undermining our democracy. As we wait for Congress to act on an amendment to the US Constitution, as urged for the past three years by the Hawaii State Legislature, this amendment to our state constitution would help greatly by allowing the legislature to set limits on the money that flows into our election campaigns and into lobbying efforts. I urge you to pass this bill and allow the public to vote on the amendment in November.

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House Judiciary Committee
Chair Karl Rhoads, Vice Chair Sharon Har

Tuesday 01/28/14 at 02:00PM in Room 325
HB1499– Relating to Free Speech, Monetary Expenditures

Testimony of 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 the intent of HB1499 which proposes a constitutional amendment to the Hawaii State Constitution specifying that the freedom of speech does not include the expenditure of money to influence elections or promote lobbying.

This bill is symbolic in that it challenges the 2010 U.S. Supreme Court’s *Citizens United* decision which struck down federal limits on campaign spending by corporations and unions claiming that such restrictions violate the first amendment, thus granting corporations and unions the same free speech protections as natural persons. This decision has allowed unlimited amounts of special interest spending on elections in recent years.

Since the *Citizens United* decision, Common Cause has become even more vocal in our belief that the freedom of speech should be reserved only for natural persons. This proposed Constitutional Amendment in HB1499 would narrow the meaning of “free speech” instead of targeting what qualifies as a natural person.

Thank you for the opportunity to testify on HB1499.