



**STATE OF HAWAII
OFFICE OF ELECTIONS**

802 LEHUA AVENUE
PEARL CITY, HAWAII 96782
www.hawaii.gov/elections

SCOTT T. NAGO
CHIEF ELECTION OFFICER

**TESTIMONY OF THE
CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS
TO THE HOUSE COMMITTEE ON JUDICIARY
ON HOUSE BILL NO. 1476
RELATING TO CAMPAIGN FINANCE**

February 12, 2015

Chair Rhoads and members of the House Committee on Judiciary, thank you for the opportunity to provide comments on House Bill No. 1476. The purpose of this bill is to require the Campaign Spending Commission to shield the identity of donors from candidates and to create a publicly funded voter voucher pilot program to be administered by the Office of Elections.

As it relates to the voter voucher pilot program, there are a variety of matters that would need to be clarified, in order to ensure that the program has the best opportunity to work successfully. Specifically, we see this bill as entailing two distinct types of responsibilities. The first type are those related to financial matters, such as the distribution of funds, the monitoring of expenditures, and the return of unexpended funds. The second type of responsibilities are those related to the distribution, collection, and verification of voter voucher forms.

We recommend that the bill ensure that the financial functions of the voter voucher pilot program be conducted by the Campaign Spending Commission, as those responsibilities are consistent with the core functions of the Campaign Spending Commission, as opposed to the Office of Elections. Specifically, the bill currently provides that the Office of Elections will distribute voter voucher funds. Section 6(d). Additionally, the bill refers to an increase in the normal expenditure limits that are enforced by the Campaign Spending Commission, by whatever amount of voter voucher funds are received by the candidate. Section 6(e). Finally, the bill refers to any unspent voucher credits expiring, which we

understand would require the candidates to return any unused voter voucher funds to the Office of Elections. Section 6(g). In order to ensure candidate compliance with this provision, it would necessitate the Office of Elections to monitor candidate expenditures of voter voucher funds. These duties, as previously mentioned, are inconsistent with the normal functions of the Office of Elections.

Additionally, we have the following comments.

Section 6(b)(1) & (2) of the bill appear to be focused on deterring campaigns from directly or indirectly paying for voter vouchers. The regulation of such conduct will be difficult to police as these are individual transactions between campaigns and voters, in which there are no witnesses. Additionally, while subsection (k) refers to violations of this bill being subject to the penalties of subpart I of part XIII of Chapter 11, HRS, which is administered by the Campaign Spending Commission, we would recommend that specific criminal sanctions under Chapter 19, HRS (Election Offense) be considered. Essentially, as voter vouchers have a monetary value, the purchase of them from voters at a reduced cost, or similar improper acquisition of them, could be considered a theft of state funds that would justify criminal penalties.

Section 6(b)(3) of the bill refers to voter voucher credits not being issued to a candidate by a candidate or the candidate's "family." The term "family" is not defined in the bill and could be open to interpretation. As such, we recommend having the provision refer to the term "immediate family," which is defined in HRS § 11-302. Having said that, we take no position on whether legally one can preclude individuals based on a family relationship from the same right to utilize voter vouchers that other voters would be entitled to under this bill. Such questions are best directed to the Campaign Spending Commission or the Department of the Attorney General, which have subject matter expertise on such matters.

In regard to Section 6(c), there should be clarification as to whether the bill envisions a separate voter voucher for the Primary Election and another for the General Election. In addition, if a candidate will only appear on the Primary Election ballot, as there are no candidates from any other party, that would oppose him or her in the General Election, may the candidate solicit a voter voucher for the General Election, despite not being on the ballot? Similarly, if such a candidate is unopposed even in their own Primary Election and objectively has no opponent at all, can they solicit a voter voucher for the Primary Election?

As for Section 6(d), which provides that the Office of Elections shall verify the voter voucher information submitted to it, there are a variety of administrative matters that should be clarified. For example, what information will the Office of Elections be permitted to require to be on the form, in order to allow us to verify the identity of the voter. Typically, our petitions, nomination papers, and similar documents require a voter to provide their name, residence address, date of birth, and either their full social security number or the last four digits, along with their signatures. This information allows us to confidently confirm the identity of the signatory of a document as being the same person we have on record as a registered voter.

While Section 6(h), subsequently recognizes the sensitivity of the information on the voter voucher forms by saying the information shall be confidential and not disclosed, we believe this should be elaborated on. For example, we recommend that it be made clear that the collectors of these completed vouchers are not agents of the state, if these vouchers are somehow lost, misplaced, or misused. Additionally, there should be explicit language that the collectors of these forms are not authorized to retain any personally identifiable information about a voter and that there may be criminal penalties. As such, we propose the following language for the Committee's consideration.

§11-___ Distribution, collection, and return of voter voucher forms

- (a) Notwithstanding any law to the contrary, the distribution, collection, and return of voter vouch forms shall be covered by this section.
- (b) A person by the mere act of distributing or collecting voter voucher forms, or similar documents, shall not be considered a representative or agent of the state or counties, and the mere provision of a document to such an individual shall not constitute compliance with any applicable statutory requirements associated with the document. There is no restriction on the distribution and collection of said documents in connection with campaigning or other activities that may be covered by the First Amendment of the United States Constitution.
- (c) A failure by an individual to return any voter voucher form entrusted to them by a member of the public to the appropriate election official, as a result of gross negligence, wanton conduct, or intentional wrongdoing shall constitute a misdemeanor.

(d) It shall be unlawful for any person to use, print, publish, or distribute any information acquired directly or indirectly from the voter voucher form, or similar documents, unless specifically authorized by law. Any person violating this subsection as a result of gross negligence, wanton conduct, or intentional wrongdoing shall be guilty of a misdemeanor.

Unstated in Section 6(d) is a statutory deadline for when voter voucher forms are to be submitted, how long the Office of Elections will have to verify the forms, and whether there is an administrative hearing process or court process, if there is a dispute over the Office of Elections verification of forms, similar to what we have for presidential nomination papers or political party petitions. We believe the provision of such language in the bill is necessary to ensure the proper administration of the pilot project.

Thank you for the opportunity to testify on House Bill No. 1476.

THE LIBERTARIAN PARTY OF HAWAII
C/O 1658 LIHOLIHO ST #205
HONOLULU, HI 96822

TESTIMONY

February 9, 2014

RE: **HB 1476** to be heard Thursday February 12, 2015 in Conference Room 325

To the members of the Senate Committees on Judiciary

OPPOSE

The Libertarian Party believes **all the political parties in the state should have a voice** in the discussion of election laws and campaign finance. There are many problems in our existing laws that have been created by the same Democratic Party that is suggesting this bill.

HB 1476 is simply another version of the collect a lot of small donations in your district and score a big tax funded payday way of creating a more neutral playing field. It is a gift to organized labor, conservative church groups and others with members in the respective districts who can now sign vouchers for endorsed candidates and get them a piece of everyone's taxes without having to spend any of the interest group's money at all. This does not remove outside influence from elections, but rather increases it. The consequences of such a law will be in direct contradiction to its stated purpose.

There are good ideas available to address the problems of campaign finance, but nothing is likely to get moved forward until the key stakeholders, as I stated above, are included in the discussion.

Tracy Ryan
Chair



LEAGUE OF
WOMEN VOTERS®

49 South Hotel Street, Room 314 | Honolulu, HI 96813
www.lwv-hawaii.com | 808.531.7448 | voters@lwvhawaii.com

COMMITTEE ON JUDICIARY

THURSDAY FEBRUARY 12, 2015, 2 P.M., ROOM 325
HB1476 RELATING TO CAMPAIGN FINANCE
TESTIMONY
Beppie Shapiro, League of Women Voters of Hawaii

Chair Rhoads, Vice-Chair Buenaventura, and Committee Members:

The League of Women Voters of Hawaii supports sections 2, 3 and 7 of HB1476 and offers no opinion on section 6. HB1476 would anonymize campaign contributions (Sections 2 & 3) and give those eligible to vote vouchers with which to make campaign contributions (Section 6).

The League of Women Voters, both nationally and in Hawai'i, has long recognized the importance of reining in the reliance of political election campaigns on major contributions from private organizations and a small number of wealthy individuals. A large share of the general public has become concerned about this problem following the SCOTUS decision in Citizens United.

For many years, those concerned about the corrupting influence of large campaign contributions, or the public perception of such corruption, have relied on contribution limits and “transparency” — public reporting of contributions and expenditures — to minimize these problems. But now almost all contribution limits have been found to be unconstitutional by the Supreme Court.

But following recent SCOTUS decisions, “charitable organizations” and other SuperPacs have been able to hide the identities of major funders as they spend very large amounts to ensure the election of candidates they favor.

And is transparency by itself really enough to give the public confidence that a large campaign contribution will not result in greater access to and favorable treatment by a candidate elected with the help of such a contribution? The League of Women Voters of Hawaii is not confident: we don't believe most citizens comb through reports of contributions and much less, remember them later as legislative decisions are made. More likely, their sense of unease about the agenda of major contributors out-weighting constituents' interests continues in spite of transparency.

We find the idea of anonymizing all campaign contributions highly creative and likely to diminish the perception or reality of the corrupting influence of large contributions.

HB1476, Sections 2 & 3, propose that the Office of Elections receive all campaign contributions, bundle them, and send the amount donated to each candidate to that candidate at intervals throughout the campaign



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49 South Hotel Street, Room 314 | Honolulu, HI 96813
www.lwv-hawaii.com | 808.531.7448 | voters@lwvhawaii.com

season. Obviously this would substantially increase the staff, office space, security and IT capability needed by the Office of Elections. HB1476 provides for an unspecified amount to be added to the Office of Elections budget to meet these needs. The League regards meeting those needs as essential to the success of this measure.

The League has not been able to study Section 6 if HB1476 (vouchers to eligible voters) and at present we have no opinion on it.

We urge you to pass this bill with Sections 2, 3 and 7 substantially intact. Thank you for the opportunity to submit testimony.

Committee on Judiciary
Thursday, February 12, 2015 2:00 p.m., Room 325
HB1476, Relating to Campaign Finance
Testimony from Susan Dursin, representing herself
Captain Cook, HI sgd8@hawaiiantel.net

Chair Rhoads, Vice-Chair Buenaventura, and Members of the Committee:

I am in strong support of sections 2, 3 and 7 of this bill, which would require all campaign donations to be processed through the Campaign Spending Commission for anonymous distribution to candidates.

I find the pilot project portion of this bill (Section 6) a complex proposal which deserves careful scrutiny. I would suggest that it be separated from this bill and presented at a later time for consideration.

Nothing has captured the attention and alienated the voting public in the U.S. like the increasing influence of large campaign donors. While various efforts to curb such influence are underway across the nation, none has gained enough strength to be effective. For example, the movement to pass a Constitutional Amendment that would reverse the effect of Citizens United is slowly gaining momentum. Yet, it will be a long time, if ever, before it succeeds.

The real chance of making change lies at the state level. HB1476 creates a path to blocking what has become an insidious rising tide of money that can undermine the responsible performance of government. The cost would be substantial. The result would be enormous in terms of restoring public faith in the election process.

While many donations are made simply because an individual or a group believes that a given candidate is the best person for the job, others are made for the express purpose of securing access and influence. Many candidates do not recognize the part that large donations play. The truth, however, is that the candidate must even, subconsciously, respond to those who have shown themselves to be so deeply supportive. HB1476 removes that possibility.

Please pass this bill, allowing Sections 2, 3 and 7 to move forward.

Thank you for considering my testimony.

KRISTIN E. IZUMI-NITAO
EXECUTIVE DIRECTOR



PHONE: (808) 586-0285
FAX: (808) 586-0288
WWW.HAWAII.GOV/CAMPAIGN

LATE

STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

February 11, 2015

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

The Honorable Joy A. San Buenaventura, 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. 1476, Relating to Campaign Finance**

Thursday, February 12, 2015
2:00 p.m., Conference Room 325

Thank you for the opportunity to testify on this bill. The Campaign Spending Commission ("Commission") opposes this bill (primarily because of sections 1 through 5) and offers the following comments.

Section 2 of this bill amends Chapter 11, Hawaii Revised Statutes ("HRS"), by adding a new section that requires contributions to candidate and noncandidate committees be made anonymously through the Hawaii election campaign fund. Anonymous contributions should not be allowed beyond the limited calabash bowl situation already provided in HRS §11-353(d). If anonymous contributions are mandated, the potential for corruption will be enhanced, rather than ameliorated. The voting public will not know the identity of the contributors to candidates. At the same time, nothing will prevent contributors from communicating with a candidate about their contributions. Thus the potential for *quid pro quo* corruption will obviously be heightened because the candidates will know the identities of the contributors while the public will not know.

If funding is provided, the Commission supports the intent of public funding of candidates. Section 6 of the bill establishes a voter voucher pilot program, to be administered by the Office of Elections. As the Commission understands the bill, this pilot program will allow registered voters to give \$5 vouchers to candidates for the House of Representatives. The candidates can then redeem these vouchers with the Office of Elections. From a financial standpoint, assuming 100% of the vouchers are redeemed and using 2014 registered voter statistics, House candidates will receive public funding in amounts ranging from \$32,780 to

\$82,200, depending on the district. In the 2014 elections, the average amount spent by winning candidates was \$44,083.18. The average amount raised by those candidates was \$48,768.13.

The Commission respectfully recommends that the Committee hold or defer H.B. No. 1476. If the Committee is inclined to pass this measure, the Commission suggest that the Committee delete section 1 (except for the part that addresses the pilot voucher program), and sections 2 through 5 of the bill.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
SEVENTY-EIGHTH LEGISLATURE, 2015**

LATE

MEASURE:

H.B. NO. 1176, RELATING TO CAMPAIGN FINANCE.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, February 12, 2015

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Russell A. Suzuki, Attorney General, or
Deirdre Marie-Iha or Valri Lei Kunimoto, Deputy Attorneys General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General has serious reservations about this bill and does not believe the bill can achieve its intended objective. This bill seeks to decrease the influence of "big money" in politics by making all political contributions anonymous. In the Department's view, application of this bill would have the opposite of its intended effect. Furthermore, as detailed below, making campaign contributions anonymous to those who ultimately receive them would be both impossible, pragmatically speaking, and unconstitutional if applied to its logical extreme. Given the bill as introduced, we recommend the bill be held or deferred indefinitely. We stress, however, that the stated objective of this bill can be achieved by other means, as least as to candidates, via a public financing program.

This bill has two major parts: (1) making all political contributions anonymous, and (2) establishing a pilot voter voucher program.

As to anonymity provisions (sections 2 through 5), we do not believe the bill can realistically achieve its stated objective. Even if political contributions were channeled through an intermediary, the bill does not, and in any event cannot, prevent a contributor from informing the relevant candidates that he or she had supported them. The contributor has a constitutionally protected right to identify the candidate supported and the amount of the contribution, if the contributor so chooses. Such communication is a protected form of political speech under the First Amendment.¹

¹ The anonymity provisions would entirely deprive *all* voters and interested parties of a particular form of political speech (making political campaign contributions with one's name on it). For

In practice, therefore, instead of combating corruption, the bill would foster the circumstances in which corruption could occur where both the candidate and the contributor would know the source of the campaign funds, *but the public would not*. This would drive campaign contributions underground, instead of operating transparently as required under current law, and effectively deprive the public of the ability to determine what interests are supporting the candidate. See, e.g., *Human Life of Washington v. Brumsickle*, 624 F.3d 990, 1006 (9th Cir. 2010) ("individual citizens seeking to make informed choices in the political marketplace need to know what entity is funding a communication."). It would also deprive the public of the chance to police any conduct by the officeholder that might benefit the contributor. For this reason the Department believes the anonymity provisions will not provide the protection from the "influence" of "concentrated money and disproportionately large contributions in politics." (Page 1, lines 3-4).

The proposed voter voucher program is limited to candidates for the house of representatives in the 2016 elections. It appears to have the same flaw noted above, as it would direct campaign funding to a particular candidate on the voter's behest, though an intermediary. As with the anonymity provisions discussed above, the State could not prevent a voter from informing the candidate that he or she had provided financial support. The candidate and the voter would know this, but the public would not. The Department recommends abandoning this approach to campaign finance.

In addition, the bill indicates that the voter vouchers would serve as a substitute, at least in part, for the minimum qualifying contribution required for a candidate to receive public financing. (Page 9, lines 1-2). This change would severely compromise the qualifying contribution requirement governed by sections 11-428 and 11-429, Hawaii Revised Statutes. Qualifying contributions are small contributions (\$100 or less) from individual residents of Hawaii. These small contributions are meant to ensure that the candidate has sufficient support among voters of his or her district to be considered a serious candidate for office and therefore worth the expenditure of public funds through the public financing program. Under the bill, however, the voucher program would be funded through the general fund (Page 11, lines 5-6).

this reason, it is possible that the bill is unconstitutional itself. We need not answer that question, however, because it is clear that the anonymity provisions cannot achieve their stated objective as written.

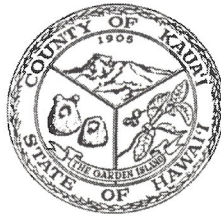
The voting public would not be committing *its own money* to support a chosen candidate and would instead be directing money from another source. This would significantly undercut the effectiveness of the minimum qualifying contributions requirement.

For these reasons we have serious reservations about this bill and recommend that it be held or deferred indefinitely. We note, however, that the apparent intent of this bill could be addressed, at least in part, by a fully funded public financing program.

Thank you for the opportunity to present our concerns.

RICKY R. WATANABE
County Clerk

Telephone: (808) 241-4800
TTY: (808) 241-5116



JADE K. FOUNTAIN-TANIGAWA
Deputy County Clerk

Facsimile: (808) 241-6207
E-mail: elections@kauai.gov

ELECTIONS DIVISION
OFFICE OF THE COUNTY CLERK
4386 RICE STREET, SUITE 101
LIHU'E, KAUA'I, HAWAII 96766-1819

LATE

TESTIMONY OF RICKY R. WATANABE
COUNTY CLERK, COUNTY OF KAUA'I
TO THE HOUSE COMMITTEE ON JUDICIARY
ON HOUSE BILL NO. 1476
RELATING TO CAMPAIGN FINANCE
February 12, 2015

Chair Rhoads and Committee Members:

Thank you for the opportunity to testify on House Bill No. 1476. This Bill requires the Campaign Spending Commission to process all campaign donations so as to shield the identity of donors from candidates. The Bill would also require the Office of Election to create a publicly funded voter voucher pilot program.

We have major concerns with this Bill since requiring the Office of Elections to create and administer a publicly funded voucher program is inconsistent with its primary mission, and appears to be outside the scope of its statutory responsibilities.

Additionally, since the Office of Elections only maintains a presence on O'ahu, we are concerned that the neighbor island Counties will be required to implement this voucher program.

Thank you for this opportunity to testify on House Bill No. 1476.

RICKY R. WATANABE
County Clerk



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

TESTIMONY FOR HOUSE BILL 1476, RELATING TO CAMPAIGN FINANCE

LATE

House Committee on Judiciary
Hon. Karl Rhoads, Chair
Hon. Joy A. San Buenaventura, Vice Chair

Thursday, February 12, 2015, 2:00 PM
State Capitol, Conference Room 325

Honorable Chair Rhoads and committee members:

I am Kris Coffield, representing IMUAlliance, a nonpartisan political advocacy organization that currently boasts over 300 local members. On behalf of our members, we offer this testimony in opposition to House Bill 1476, relating to campaign finance.

We oppose this proposal for four primary reasons. First, a functional democracy depends upon transparency, not secrecy. Under this bill, a candidate would not know the identity of his or her donors, whose dollars would be funneled through and cloaked by the Hawai'i Campaign Spending Commission. This means that the public, too, would not know who is funding a candidate and, thus, would not be able to use campaign finance information to determine which candidate best represents the public interest. Moreover, candidates would not be able to refuse donations from donors with whom they disagree, as Kathryn Xian did last year (albeit at the federal level) in rejecting campaign contributions from biotech companies.

Second, it is unlikely that cloaking donations would lead to changes in campaign contribution patterns. In Hawai'i, for example, biotech companies are large contributors to candidates who, rightly or wrongly, oppose genetic engineering regulation. We find it unlikely that candidates would stop soliciting or receiving donations from like-minded donors, including corporate donors, simply because the donations would be kept secret. On the contrary, cloaking donations would only provide an added layer of secrecy to campaign finance at a time when *Citizens United v. FEC* and similar rulings have allowed disproportionate amounts of corporate money to flood our electoral system.

Third, this bill does not prohibit a candidate from soliciting donations. Rather, this bill purports to make donations invisible, so that a candidate would not know who donated or how much was contributed. This could have the unintended consequence of precipitating increased

and more aggressive fundraising efforts, as candidates and the public will not know which potential contributors have donated to opposing candidates (who to target).

Finally, despite its novelty, dollar voting does not reflect political reality. Nothing in this bill prohibits a donor from attempting to influence other donors or disclose their donations, privately or publicly. Thus, the proposal may provide secrecy for those donors who wish to remain anonymous for professional or political reasons, while having little effect on those for whom transparency is a virtue. Similarly, this bill does little to curtail solicitation of donations, including candidates seeking money from corporate donors and lobbyists. In practice, we find it unlikely that communication between candidates and corporate contributors would stop, especially given the close relationship between policy preferences and and political donations. What's to prevent a lobbyist, for instance, from telling a candidate that he or she will donate \$1,000.07, and a candidate seeing that exact amount and identifying the lobbyist as the donor? What's to prevent a lobbyist from simply communicating his or her donation to the candidate outside of the Campaign Spending Commission's disbursement protocol? Would such an act be prosecuted as a campaign spending violation?

The political philosopher John Rawls famously asked us to distribute rights and resources from behind a “veil of ignorance,” in which we know nothing about our individual abilities, tastes, and social positions. As a thought experiment for adjudicating the morality of political arguments, Rawls's argument has merit. Unfortunately, we cannot deny the present condition in which we live or the past from which it stems, including political transactions that have influenced our current system of governance. Mahalo for the opportunity to testify in opposition to this bill.

Sincerely,
Kris Coffield
Executive Director
IMUAlliance