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STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

March 17, 2016

TO: The Honorable Gilbert S.C. Keith-Agaran, Chair
Senate Committee on Judiciary and Labor

The Honorable Maile S.L. Shimabukuro, Vice Chair
Senate Committee on Judiciary and Labor

Members of the Senate Committee on Judiciary and Labor

FROM: Kristin Izumi-Nitao, Executive Director *KI*
Campaign Spending Commission

SUBJECT: **Testimony on H.B. No. 2156, H.D. 2, Relating to Campaign Finance**

Friday, March 18, 2016
10:00 a.m., Conference Room 016

Thank you for the opportunity to provide comments on this bill. This bill amends several provisions of Chapter 11 of the Hawaii Revised Statutes (“HRS”). The Campaign Spending Commission (“Commission”) opposes sections 1 and 2 of this bill, but supports sections 3, 4, and 5 of this bill.

Section 1 of this measure proposes to amend Hawaii Revised Statutes (“HRS”) §11-381(a)(6) by deleting the authorization for a candidate to use campaign funds to purchase two tickets to another candidate’s fundraising events. In place of the deleted language, the measure would allow a candidate to use campaign funds to make contributions to another candidate up to the contribution limits established by HRS §11-357. This measure thus removes the only condition (i.e., have a fundraiser with tickets issued) imposed upon a candidate in order to receive campaign funds contributed to another candidate. This use of campaign funds already goes against the public policy established in HRS §11-382(1) which prohibits the use of campaign funds to support another candidate, which of course this measure also seeks to amend in Section 2, by excepting HRS §11-381 from the prohibition contained in HRS §11-382(1).

If this Committee intends on passing this measure, the bill should be amended by adding an additional section that provides:

“SECTION __. Section 11-342, Hawaii Revised Statutes, is amended by adding a subsection (d) as follows:

‘(d) The notice of intent to hold a fundraiser for a candidate or candidate committee, and any materials used to promote a fundraiser for a candidate or candidate committee, must include a disclaimer that contributions received by the candidate may be used by that candidate to make contributions to other candidates.’”

This amendment will make it clear to potential contributors that their contributions to a candidate may in fact go to other candidates, who may not directly represent the contributors.

Section 1 also proposes to amend HRS §11-381(a)(8), the provision that allows expenditures “for ordinary and necessary expenses incurred in connection with the candidate’s duties as a holder of an office,” by providing that expenses for membership in civic or community groups or for protocol gifts shall not exceed twice the amount that a person can contribute to the office holder. Under HRS §11-357, the limit, per election period, would be \$4,000, \$8,000, or \$12,000 depending on the office.

HRS §11-381(a)(8) is almost a verbatim copy of its federal counterpart, 52 U.S.C. § 30114(a)(2).¹ The Commission frequently refers to Federal Election Commission (“FEC”) guidelines and advisory opinions in enforcement proceedings and when drafting its own advisory opinions, where the Hawaii Campaign Finance Law provision is substantially similar to its federal counterpart. Thus, HRS §11-381(a)(8) should not be amended absent a clear and compelling need to modify the provision. The information disclosed by candidates on the Commission’s electronic filing system from November 7, 2012 to December 31, 2015 (a span of two election periods) show that no candidate would have been in violation of the law had the limitation been in effect, although one candidate would have come close to the limit. None of the other candidates who reported paying for membership in civic or community groups or protocol gifts, would have come close to the proposed limit. This bill is therefore not necessary because there is little conduct to deter.

The Commission requests that this Committee delete Sections 1 and 2 of this bill.

Section 3 of the bill proposes to amend HRS §11-421(c) by deleting “the commission’s operating expenses, including staff salaries and fringe benefits” as prescribed uses of the Hawaii Election Campaign Fund (“HECF”). Section 4 of the bill transfers a blank amount, which is in excess of the requirements of the HECF to run the partial public financing program, to the general fund.² Section 5 of the bill appropriates a blank amount from the general fund for FY 2016-2017 for the Commission’s operating expenses, including staff salaries.

For the past seven fiscal years, the Commission has been operating at an average net deficit of about \$524,000. As of June 30, 2015, the balance of the HECF was \$1,882,145.59.

¹ That federal statute provides that a contribution may be used “for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office.” A copy of the Federal Election Campaign Act (FECA) of 1971, as amended, is available at www.fec.gov/law/feca/feca.pdf.

² In 2014, \$234,864.92 was disbursed to support the partial public financing program. Of that amount, \$105,164.73 was disbursed to Governor Ige’s campaign.

The Commission's attempts to increase revenue have not been successful; especially since the Commission's revenue is dependent on the \$3 state income tax check-off, the interest generated from the principal, and any funds that escheat to the HECF pursuant to campaign finance laws. Given this trend, the Commission is concerned that its revenue is insufficient to sustain Commission operations and programs. The Commission projects that as early as August 2017, the funds in the HECF will be "close to depletion" such that we may run a limited public funding program. See, HRS §11-422(b). Of greater concern is that by December 2017, the funds are projected to be "near depletion" such that we will be unable to run the public funding program for the 2018 election. See, HRS §11-422(a).

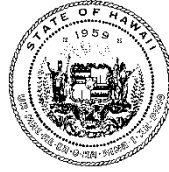
We therefore appreciate the intent behind this bill which seeks to restore the original purpose of the HECF to fund public funding (see, Hawaii Constitution, Article II, Section 5) and to have general funds pay for government and statutory functions provided by the Commission (see, HRS §11-314). The Commission believes that an appropriation of \$495,506 (or \$686,416³ if fringe benefits were included) would cover operations including salaries for FY 2017.

The Commission supports the intent of these sections of the bill that seeks to fund the operating expenses of the Commission through the general fund, but urges this Committee to pass this measure in the form of S.B. No. 2438, S.D. 2. The Senate version of this bill funds the operating expenses of the Commission for FY 2016-2017 from the general fund without the requirement that the HECF be further depleted by the transfer of funds from the HECF to the general fund.⁴

³ The figure, \$661,545, provided in the Commission's testimony to the House Committee on Judiciary on February 1, 2016, and to this Committee on February 4, 2016 on S.B. 2438, the companion bill, was a miscalculation of the amount of fringe benefits.

⁴ The Commission would like to see continued discussion of the matter raised by Chair Luke during her committee's hearing on this bill; that is, the necessity of a provision that maintains the HECF at a set balance that would allow the Commission to run the partial public funding program, with the automatic replenishment of the trust fund by future appropriations should the balance fall below that set amount.

DAVID Y. IGE
GOVERNOR



DOUGLAS MURDOCK
Comptroller

AUDREY HIDANO
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

TESTIMONY
OF
DOUGLAS MURDOCK, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
SENATE COMMITTEE
ON
JUDICIARY AND LABOR
ON
MARCH 18, 2016
H.B. 2156, H.D. 2

RELATING TO CAMPAIGN FINANCE

Chair Keith-Agaran and members of the Committee, thank you for the opportunity to submit written testimony on H.B. 2156, H.D. 2 (the measure).

The Department of Accounting and General Services (DAGS) as a matter of general policy does not support any proposed legislation that will have a negative impact on the administration's executive supplemental budget and initiatives submitted for fiscal year 2017.

We do not support the measure if the appropriation of any general funds to the Commission will have a negative impact on the administration's executive supplemental budget and initiatives submitted for fiscal year 2017. It may be more appropriate for this change in means of financing for the operating expenses to occur through the executive budget process for the next biennium budget for 2017 through 2019.

Thank you for the opportunity to submit written testimony on this measure.



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SENATE COMMITTEE ON JUDICIARY AND LABOR
FRIDAY, March 18, 2016, 9:00 a.m. CONFERENCE ROOM 016
HB 2156, HD2 RELATING TO CAMPAIGN FINANCE

TESTIMONY

Janet Mason, Co-Chair, Legislative Committee, League of Women Voters of Hawaii

Chair Keth-Agaran, Vice-Chair Shimabukuro, and Committee Members:

The League of Women Voters of Hawaii opposes the HD2 version of HB2156, reversing our strong support for the original version of this measure. The HD2 radically altered the original purpose of this bill.

Hawaii Election Campaign Fund

The original intent of the bill was to appropriate money for the Campaign Spending Commission's operating expenses from the general revenues of the state, instead of continuing the practice of using trust funds from the Hawaii Election Campaign Fund for this purpose. Instead of merely deferring a bill which they did not support, in its Committee Report the House Finance Committee acknowledged deleting this original purpose. Newly added is a provision to transfer "excess" trust funds from the Hawaii Election Campaign Fund to the general fund.

Is the legislature's intent to actually eliminate the trust fund entirely? We don't think the people of Hawaii will stand for this, and we respectfully request an amendment to this bill to restore the original language of the measure and add a provision that would provide for a floor below which funds could not be transferred from the Hawaii Election Campaign Fund.¹

Why would the Legislature defund the Hawaii Election Campaign Fund during an election year? This is a **trust** fund set up by the people of Hawaii to make public money available for a candidate's campaign expenses. The League urges incumbents and newcomers to politics to use this as a preferred source of

¹ This floor might correspond with the minimum threshold balance that must be available in the Fund before money for the Partial Public Funding program can be disbursed to eligible political candidates.



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financing their campaigns, and we also urge Hawaii taxpayers to continue to designate \$3 of the income taxes they pay to the Hawaii Election Fund.

Candidate filing for the 2016 Elections runs until June 7, 2016; we won't know until June how much of the trust fund balance might be used by 2016 candidates. So at this point, no trust funds should be considered "excess" as described in the bill, and there is no logical basis for estimating what is "excess." Further since the State enjoys a healthy budget surplus, there is no justification for continuing to use trust funds to pay for the operating expenses of the Commission to cover a non-existent budget emergency.

An appropriation of some amount from the general fund for the operating expense of the Campaign Spending Commission remains in the bill. Since this is a supplemental budget year the \$661,545 appropriation required would cover the 2016-2017 period only. But we endorse this approach and hope the legislature will continue to appropriate operating expenses from the general fund to stabilize the important services the Commission provides the public.

Permitting Candidates to Use Campaign Contributions for Other Candidate Committees

The House Finance Committee added new material to the original bill permitting candidates to use campaign funds for direct contributions to other candidates, and we strongly object to this. The legitimate use of campaign funds is for expenses directly related to a candidate's campaign: communicating with the public through media advertisements and social media, mailings and websites listing the candidate's qualifications and issue positions, making signs, rallies and meetings, buying tee shirts or other modest gifts for active supporters, car expenses, office rent, paid staff, etc.

Donations of surplus campaign funds to other candidate committees is easily construed as a form of vote buying. Even when no votes are needed in a current election cycle, they probably will be in future elections or in future legislative sessions if the incumbent competes for office and especially if the incumbent is successfully elected.

People who contribute to an election campaign believe they are helping to elect a specific candidate, not to letting the candidate decide to which candidate committee their dollars should be donated. Under this bill nothing prevents a donor from informally suggesting that the full threshold amount they have donated be redirected to another candidate's committee, while simultaneously donating directly to the other



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candidate's committee. In this way, donations of surplus campaign funds by candidates to another candidate committee as permitted under this bill can obscure who is really financing a political campaign and how much donors are contributing.

Using Campaign Funds for Community Memberships and Protocol Gifts

Inexplicably the HD2 also grafts another measure, HB 2066, back in to HB2156. The language of this change deceives – it doesn't "limit" expenditures; in fact, it raises the current amount an elected official may spend from campaign funds for memberships in civic or community groups or on protocol gifts. Depending on the office held, the limit in each election period would be \$4,000 \$8,000 or \$12,000. Yet the Campaign Spending Commission testified on HB 2066 that for the two election periods ending December 31, 2015 no Hawaii candidates except one came close to any of these higher limits, so there's no obvious reason for this change. The League of Women Voters opposes using campaign funds for civic and community memberships or protocol gifts.

We ask that you amend the bill to make it correspond with the original measure while adding the provision for a "floor" on transferring money from the Hawaii Election Campaign Fund. Thank you for the opportunity to submit testimony.



Senate Judiciary + Labor Committee
Chair Gilbert Keith-Agaran, Vice Chair Maile Shimabukuro

Friday 03/18/2016 at 10:00 AM in Room 016
HB 2156 HD2 – Relating to Campaign Finance

TESTIMONY
Carmille Lim, Executive Director, Common Cause Hawaii

Dear Chair Keith-Agaran, Vice Chair Shimabukuro, and members of the Committee:

Common Cause Hawaii opposes the HD2 version of HB2156, and asks the Committee to remove sections 1, 2, and 4 of the bill.

The original HB2156 would have allowed for the Campaign Spending Commission's ("the Commission" or "CSC") general operating expenses be supported by the general fund, instead of the Hawaii Election Campaign Fund ("HECF").

In the House Finance Committee report, the Committee acknowledged deleting the original intention of HB2156, and instead included language to:

1. Make it easier for candidates to use campaign funds to make donations to other candidates; and
2. Increase the allowable campaign spending limit for membership and protocol gifts.
3. Allow candidates to use their campaign funds to support another candidate, which is currently prohibited under HRS §11-382(1).

Further, a new provision within Section 4 authorizes the Director of Finance to transfer "excess" money from the "Campaign Spending Trust Fund" into the general fund.

One of Common Cause Hawaii's biggest concerns is ensuring that adequate and sustainable funding is made for the Hawaii Election Campaign Fund — the trust fund alluded to in Section 4 — which supports Hawaii's partial public funding program. The concept for the Hawaii Election Campaign Fund emerged during the 1978 Constitutional Convention as Article II, Section 5 of the Hawaii State Constitution. The legislature was directed to "establish a campaign fund to be used for partial public financing of campaigns of the State and its political subdivisions," and so the fund was established by the 1979 Hawaii State Legislature.

We ask the committee to defer the bill as currently written, or pass out an amended SD1 which removes sections 1, 2, and 4 of the bill thus preserving the original intent of the bill: to ensure the Hawaii Campaign Spending Commission is a sustainable agency, and we must preserve the Hawaii Election Campaign Fund, as specified in the Hawaii State Constitution.

Thank you for the opportunity to offer testimony **on HB 2156 HD2.**

Dear Senators Keith-Agaran and Shimbukaru and Members of the Senate Judicial Committee,

I thank you for the opportunity to voice my opposition to HB 2165 and in specific to the following part:

(6) [To purchase not more than two tickets for each event
11 held by another candidate or committco, whether or not
12 the event constitutes a fundraiser as defined in
13 section 11 342;] To make contributions to any
14 candidate committee up to the threshold amounts set by
15 this chapter;

I do not think this part of HB 2156 fosters democracy. This will clearly make it more difficult for incumbents to be unseated. While this may be a good career move for those holding office, it certainly does not help the state of Hawaii to have “government of the people, by the people, for the people”. Most people in this state cannot afford to run because it is cost-prohibitive and this legislation will only exacerbate the situation.

I believe we need modest term limits to keep government accountable to those it is purporting to serve. As members of the senate judicial committee, I humbly request you to step outside of yourselves and see that this specific part of this bill is not expedient to anyone but the individuals passing it. Your job is to serve the people. I urge you to protect democracy with diligence.

Cordially,
Jennifer Swearingen

March 17, 2016

Date: March 17, 2016

To: The Honorable Senator S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Members of the Senate Committee on Judiciary and Labor

From: Christine Trecker

Subject: HB2156 HD2 Relating to Campaign Finance – Comments
10:00 am, Conference Room 016

I strongly support the provision in this bill to appropriate money out of the general revenues of the State to cover the cost of the operating expenses of the Campaign Spending Commission. It is essential that this vitally necessary watchdog agency have adequate annual State funding and not have to rely on the seriously depleted Hawaii Election Campaign Fund for its financial support.

Unfortunately, at the last hearing the Finance Committee inexplicably dropped into this bill two unrelated provisions which I oppose.

I oppose the provision to amend the HRS (Section 11-381) to allow a candidate, treasurer or candidate committee to make contributions to other candidate committees. There is good reason why this use of campaign funds is currently prohibited. It is an activity that logically could lead to “buying influence” and citizens have the right to expect that such activity be prohibited. Based on Campaign Spending Commission data, in recent years lawmakers have contributed considerable amounts to other candidates via a loophole allowing them to purchase campaign fundraiser tickets. This loophole is problematic enough without further compromising public trust by passing this proposed amendment.

I also oppose the provision in this bill to specify in the HRS that lawmakers can spend up to twice the allowable individual contribution limit on community and civic organizations. The proposed amendment would seem unnecessary based on a history of lower levels of contributions to such groups. Most importantly this practice raises concerns. As Janet Mason from the League of Women Voters put it, “donations of surplus campaign funds to community groups or other candidate committees is easily construed as a form of vote buying.”

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: Submitted testimony for HB2156 on Mar 18, 2016 10:00AM
Date: Wednesday, March 16, 2016 6:44:46 PM

HB2156

Submitted on: 3/16/2016

Testimony for JDL on Mar 18, 2016 10:00AM in Conference Room 016

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| lynne matusow | Individual | Oppose | No |

Comments: What a disgrace. If I donate money to a candidate, I want my hard earned cash to be used for that candidates campaign. No one else's. If it is going to be diverted, it should be refunded to me so I can determine if I want to support another candidate, use it to attend the opera, go out for dinner. You have no right to do this. It is unethical. It is wrong. Please stop this nonsense now by killing the bill. Lynne Matusow

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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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 16, 2016 10:50 AM
To: JDLTestimony
Cc:
Subject: *Submitted testimony for HB2156 on Mar 18, 2016 10:00AM*

HB2156

Submitted on: 3/16/2016

Testimony for JDL on Mar 18, 2016 10:00AM in Conference Room 016

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Alex Haller | Individual | Oppose | No |

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 17, 2016 2:37 PM
To: JDLTestimony
Cc:
Subject: Submitted testimony for HB2156 on Mar 18, 2016 10:00AM

HB2156

Submitted on: 3/17/2016

Testimony for JDL on Mar 18, 2016 10:00AM in Conference Room 016

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Nancy Davlantes | Individual | Oppose | No |

Comments: What started out as a good bill has been corrupted to such an extent that it should be trashed and substituted with the plain language of SB2438.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 15, 2016 2:04 PM
To: JDLTestimony
Cc:
Subject: *Submitted testimony for HB2156 on Mar 18, 2016 10:00AM*

HB2156

Submitted on: 3/15/2016

Testimony for JDL on Mar 18, 2016 10:00AM in Conference Room 016

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| Troy Abraham | Individual | Support | No |

Comments:

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