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**STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION**

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March 17, 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 *cei*
Campaign Spending Commission

SUBJECT: **Testimony on S.B. No. 202, S.D. 1, Relating to Campaign Spending**

Thursday, March 19, 2015
2:00 p.m., Conference Room 325

Thank you for the opportunity to testify on this bill. The Campaign Spending Commission (“Commission”) supports full and timely disclosure of political spending and thus supports the intent of this bill. However, the Commission is unsure if this measure is needed and offers the following comments.

Section 2 of the measure amends Hawaii Revised Statutes (“HRS”) §11-335(b) (Noncandidate committee reports) to require a noncandidate committee, if the committee makes an expenditure to support or oppose a ballot issue, to identify the ballot issue and state whether the expenditure supported or opposed the ballot issue.

HRS §11-302 provides, “[b]allot issue committee’ means a noncandidate committee that has the exclusive purpose of making or receiving contributions, making expenditures, or incurring financial obligations for or against any question or issue appearing on the ballot at the next applicable election.” Ballot issue committees are required to state in their organizational report if they were formed to support or oppose a specific ballot question and to describe the question. HRS §11-323(a)(7). Organizational reports are available to the public on the Commission’s website. Thus, if a ballot issue committee makes an expenditure, other than paying for an advertisement, the public will be able to ascertain the ballot issue being supported or opposed by reviewing the organizational report. If the ballot issue committee is paying for an advertisement, the information required to be disclosed by this measure should be readily apparent from the advertisement itself through the content and the required disclaimer. The public would not have to wait for an upcoming disclosure report to get this information.

Although it is possible that other types of noncandidate committees may make expenditures to support or oppose a ballot issue, based upon a review of their expenditures made in the 2012 and 2014 elections, none has apparently done so.

Section 3 of the measure amends HRS §11-341(d) by adding “ballot issue” to the definition of “electioneering communication.” The Commission defers to the Department of the Attorney General on this amendment in section 3.

Submitted By	Organization	Testifier Position	Present at Hearing
Amy Brinker	Individual	Support	No

Comments:

LATE

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

ON THE FOLLOWING MEASURE:

S.B. NO. 202, S.D. 1, RELATING TO CAMPAIGN SPENDING.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, March 19, 2015

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Deirdre Marie-Iha, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General has no legal objection to this bill, but has a general concern about the bill's ability to withstand a constitutional challenge. This bill adds an additional level of disclosure to several portions of Hawaii's campaign finance laws to further assist voters to "follow the money" and determine the individuals, organizations, or businesses seeking to influence their vote. The Department recommends that this Committee pass this bill only if these suggested changes are made.

The purpose of this bill is to extend to advertisements for ballots issues the electioneering communications disclosure requirements for advertisements for candidates. Electioneering communications are advertisements within a short period before the election (30 days before the primary election, and 60 days prior to the general election). See section 11-341, Hawaii Revised Statutes (HRS). Under current law, electioneering communications statements must be filed with the Campaign Spending Commission within 24 hours during that limited window. Id. Electioneering communications are presently limited to advertisements referring to *candidates* running for office. Id. (We note that the constitutionality of this statute was challenged in federal district court and is currently the subject of a Ninth Circuit appeal. Yamada v. Weaver, 872 F. Supp. 2d 1023 (D. Haw. 2012), *appeal docketed*, No. 12-15913 (9th Cir., April 20, 2012.))

This bill may be challenged as being unconstitutional under the First Amendment. Campaign finance disclosure laws are generally viewed by courts as being constitutional under

current federal law, if the government can show the necessity of such laws. *To aid in the defense of this bill, the Department strongly suggests that the debates and reports that will comprise the bill's legislative history include a discussion of the justification for this bill.* The general statements in the current purpose section (page 1, lines 1-6) and in the existing committee report may be insufficient, and inclusion of Hawaii's recent experience with advertisements regarding ballot issues during the existing electioneering-communications window (for example, 60 days before the general election) may be persuasive. Because ballot-issue committees are limited to advocating about ballot issues *exclusively* (see section 11-302, HRS), the Department is also concerned that the disclosure required by this bill may be partially redundant. Ballot-issue committees are already subject to disclosure requirements under existing law. The justification for this bill should explain why this additional level of disclosure (including the potentially burdensome 24-hour reporting requirement) is necessary given the disclosure presently required by law.

Conforming amendments will be necessary in section 11-341, HRS, the electioneering communications provision. At present this provision is limited to candidates, and would have to be amended to include ballot issues. See section 11-341(b)(5) ("clearly identifiable candidates") and subsection (d) (definition of "electioneering communication," where it refers to "clearly identifiable candidate" and "specific candidate" (paragraphs (1) and (3) of the definition)). The amendments made by the S.D. 1 are incomplete in this regard. (Page 4, line 11, to page 6, line 3.)

Conforming amendments would also be necessary for the provisions turning on "independent expenditures." (Page 3, lines 4 and 8). By statute, "independent expenditures" are limited to those made about *candidates*. See section 11-302, HRS.

Finally, there is some redundancy in the amendments made to section 11-335, HRS. The additional wording does not have to be repeated in both section 11-335(b)(3) and in each of the subparagraph (A), (B), and (C). (Page 2, line 10, to page 3, line 7.) We would suggest omitting the amendments made in section 11-335(b)(3) on page 2, lines 10-11, and in subparagraph (B) on page 3, lines 1-3. With those amendments removed, the existing amendments in made in section 11-335(b)(3)(A) and (C) should accomplish the bill's apparent intent.

The Department has no legal objection to this bill in principle. We urge the Committee to pass the bill only if these changes, which are intended to strengthen the bill, are incorporated. Thank you for the opportunity to testify.