



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

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**ON THE FOLLOWING MEASURE:**

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

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY AND LABOR

**DATE:** Friday, February 13, 2015 **TIME:** 9:00 a.m.

**LOCATION:** State Capitol, Room 016

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

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Chair Keith-Agaran 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 suggests some changes, and recommends this Committee pass this bill only if these suggestions are incorporated.

The purpose of this bill is to extend the electioneering communications disclosure requirements for advertisements for candidates, to advertisements for ballot issues. Electioneering communications are presently limited to advertisements referring to *candidates* running for office. See section 11-341, Hawaii Revised Statutes (HRS).<sup>1</sup> 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), and under current law, disclosure reports must be filed with the Campaign Spending Commission within 24 hours during that limited window. Id.

This bill may be challenged as being unconstitutional under the First Amendment. Campaign finance disclosure laws are generally viewed as being constitutional under current federal law, if the government can show the necessity of such laws. *To aid in the defense of this*

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<sup>1</sup> We note that the constitutionality of this statute was challenged in a federal district court decision and is currently the subject of a pending Ninth Circuit appeal. Yamada v. Weaver, 872 F. Supp. 2d 1023 (D. Haw. 2012), appeal docketed, No. 12-15913 (9th Cir., April 20, 2012).

*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 statement of its desirability in the current purpose section (page 1, lines 4-6) is likely insufficient.

Documenting 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 in supporting the need for the additional disclosure required by the bill. 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 given in the legislative history 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.

The Department also notes that in order to accomplish the bill's apparent intent, 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, subsection (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 Department has no legal objection to this bill in principle, but urges the Committee to pass the bill but only if these changes, which are intended to strengthen the bill, are incorporated. Thank you for the opportunity to testify.

KRISTIN E. IZUMI-NITAO  
EXECUTIVE DIRECTOR



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**STATE OF HAWAII  
CAMPAIGN SPENDING COMMISSION**

235 SOUTH BERETANIA STREET, ROOM 300  
HONOLULU, HAWAII 96813

February 12, 2015

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 *ken*  
Campaign Spending Commission

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

Friday, February 13, 2015  
9:00 a.m., Conference Room 016

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.

This 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.

**From:** [Andrea Anixt](#)  
**To:** [JDLTestimony](#)  
**Subject:** JDL 02-13-15 hearing: SB202 Testimony  
**Date:** Sunday, February 08, 2015 10:28:32 PM

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A.C. Anixt

Ka'a'awa, HI. 96730

Aloha Honorable Senators,

Please support SB202. It requires PAC's to disclose in their campaign spending reports which ballot initiatives or campaigns they are trying to influence.

Some PAC's have financed 'dirty politics hit pieces' in the last elections (for example by Hawaii Solutions, PRP, and others possibly), and we do not need that in the Aloha State. The least we can do is what this Bill supports, I would like to see them held accountable in whatever ways possible. The issues need to be discussed and decided on without smear campaigns financed anonymously.

Mahalo for consideration on this, and please pass Bill SB202 Friday.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:**  
**Subject:** Submitted testimony for SB202 on Feb 13, 2015 09:00AM  
**Date:** Monday, February 09, 2015 12:47:23 PM

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**SB202**

Submitted on: 2/9/2015

Testimony for JDL on Feb 13, 2015 09:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
barbara kahana	Individual	Support	No

Comments: Strongly support ANY and ALL actions to increase public knowledge about just who & what groups are pouring money into the process. YOU NEED TO DO MORE. There should be NO secrets or confusion as to sources of money and other items. The pubic should know who is actually influencing candid4es / issues. There should also be requirements for clear language to be used, not legal-speak. Also would assume reporting cycle requirements set deadlines in such a way as to prevent last minute dumping of money into issues.

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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**To:** [JDLTestimony](#)  
**Cc:**  
**Subject:** \*Submitted testimony for SB202 on Feb 13, 2015 09:00AM\*  
**Date:** Tuesday, February 10, 2015 7:42:32 PM

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**SB202**

Submitted on: 2/10/2015

Testimony for JDL on Feb 13, 2015 09:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kathleen M Pahinui	Individual	Support	No

Comments:

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