



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-EIGHTH LEGISLATURE, 2016**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 217, PROPOSING AN AMENDMENT TO THE HAWAII CONSTITUTION REGARDING FREEDOM OF SPEECH.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY AND LABOR

**DATE:** Thursday, January 21, 2016 **TIME:** 9:00 a.m.

**LOCATION:** State Capitol, Room 016

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

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Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General understands and appreciates that the intent of this bill is to amend the Hawai‘i 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 reservations about this bill. Unfortunately, the proposed constitutional amendment, if ratified, will have no practical legal effect. The State of Hawai‘i remains subject to the Citizens United ruling construing the United States Constitution, regardless of any amendment made to the Hawai‘i Constitution. Consequently, the Department respectfully urges this Committee to hold or defer this bill.

Amending the text of the Hawai‘i 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. This earlier Supreme Court case law includes Buckley v. Valeo, 424 U.S. 1 (1976), which interpreted 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 Hawai‘i 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. ("Independent" expenditures means when a person or organization spends its own money without coordinating with any candidate for office.) Even if the Hawai'i 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.

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



Committee: Committee on Judiciary and Labor  
Hearing Date/Time: Thursday, January 21, 2016, 9:00 a.m.  
Place: Conference Room 016  
Re: Testimony of the ACLU of Hawaii in Opposition to S.B. 217, Proposing an Amendment to the Hawaii Constitution Regarding the Freedom of Speech

Dear Chair Keith-Agaran and Members of the Committee on Judiciary and Labor:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in opposition to S.B. 217, which seeks to redefine constitutionally protected free speech to exclude the expenditure of money to influence political elections. While we appreciate the intent of this bill to ensure that all voices are heard in our democracy, we believe that S.B. 217 would be ruled unconstitutional if challenged in court.

The U.S. Supreme Court has recognized that First Amendment of the U.S. Constitution protects political speech in the form of the expenditure of money to influence political elections. *See Citizens United v. Fed. Election Comm’n*, 558 U.S. 310 (2010). Federal law provides the floor of minimum protection that must be afforded by the states with respect to political speech and the First Amendment. While the Legislature may seek to propose an amendment to the Hawaii Constitution to *expand* these rights, any proposed limitation would be unconstitutional pursuant to the Supremacy Clause of the United States Constitution.

The ACLU of Hawaii respectfully requests that the Committee defer S.B. 217.

Thank you for this opportunity to testify.

Mandy Finlay  
Advocacy Coordinator  
ACLU of Hawaii

*The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for 50 years.*

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:**  
**Subject:** \*Submitted testimony for SB217 on Jan 21, 2016 09:00AM\*  
**Date:** Wednesday, January 20, 2016 8:21:41 AM

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**SB217**

Submitted on: 1/20/2016

Testimony for JDL on Jan 21, 2016 09:00AM in Conference Room 016

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Daniel Reid         | NRA                 | Oppose                    | No                        |

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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**To:** [JDLTestimony](#)  
**Cc:**  
**Subject:** Submitted testimony for SB217 on Jan 21, 2016 09:00AM  
**Date:** Tuesday, January 19, 2016 6:48:50 AM

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**SB217**

Submitted on: 1/19/2016

Testimony for JDL on Jan 21, 2016 09:00AM in Conference Room 016

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Leimomi Khan        | Individual          | Support                   | No                        |

Comments: Support SB217, but in view of the Supreme Court decision in Citizens vs FEC, would adoption of this bill withstand any suit challenging its constitutionality.

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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