



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2017**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 1153, RELATING TO CAMPAIGN SIGNS.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY AND LABOR

**DATE:** Friday, February 3, 2017

**TIME:** 8:45 a.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** Douglas S. Chin, Attorney General, or  
Robyn Chun, Deputy Attorney General

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Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General submits comments reflecting a concern about this bill.

Senate Bill No. 1153 adds a new section to Hawaii Revised Statutes, chapter 11, that makes it unlawful to “post, maintain, display, or erect” on public property political signs urging voters to vote for a candidate. The bill includes notification provisions, authorizes the imposition of a fine for violations, and gives the Campaign Spending Commission enforcement responsibility.

Because this bill prohibits the posting of political signs on public property, the Department is concerned that it may raise a constitutional issue under the First Amendment. The United States Supreme Court has upheld as constitutional an ordinance prohibiting the posting of any signs – not just political ones - on public property where the ordinance was content and viewpoint neutral and was applied in an evenhanded manner. *See Members of the City Council of City of Los Angeles, et al. v. Taxpayers for Vincent, et al.*, 466 U.S. 789 (1984). Based on the city’s substantial esthetic interests, the Court held that:

these interests are sufficiently substantial to justify this content-neutral, impartially administered prohibition against the posting of appellees’ temporary signs on public property and that such application of the ordinance does not create an unacceptable threat to the ‘profound national commitment to the principle

that debate on public issues should be uninhibited,  
robust, and wide open.

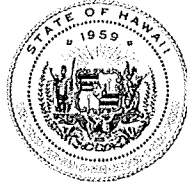
*Id.* at 817 (citation omitted).

Here, however, this bill prohibits the posting and display of only political signs on public property and is therefore not content-neutral. It may therefore be subject to challenge as unconstitutional. To avoid this, the Department recommends that this bill be amended to be content neutral.

In addition, in light of its present statutory authority (see section § 11-314,HRS), the Campaign Spending Commission is not authorized to assume enforcement responsibility for the removal of signs from public property. An amendment to section 11-314 would be needed to address this issue.

Thank you for the opportunity to testify on this bill.

DAVID Y. IGE  
GOVERNOR



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STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

February 3, 2017  
8:45 a.m.  
State Capitol, Room 016

**S.B. 1153**  
**RELATING TO CAMPAIGN SIGNS**

Senate Committee on Judiciary and Labor

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The Department of Transportation (DOT) **supports** this bill to prohibit campaign signs on public property.

Thank you for the opportunity to provide testimony.

**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 1, 2017

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

The Honorable Karl Rhoads, Vice Chair  
Senate Committee on Judiciary and Labor

Members of the Senate Committee on Judiciary and Labor

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

SUBJECT: **Testimony on S.B. No. 1153, Relating to Campaign Signs**

Friday, February 3, 2017  
8:45 a.m., Conference Room 016

Thank you for the opportunity to testify on this bill. Staff of the Campaign Spending Commission ("Commission") opposes this measure.<sup>1</sup>

This bill amends Chapter 11, Hawaii Revised Statutes ("HRS"), by adding a new section that would make unlawful the posting on public property campaign signs that urge voters to vote for a candidate. The bill assigns the responsibility for enforcement of the new section to the Commission. The bill authorizes the Commission to order the candidate who is supported by the sign to remove the sign, to assess a fine against the candidate if the candidate does not remove the sign in a timely manner, and to place a lien on the candidate's campaign account until the sign is removed by the candidate. The bill directs the Commission to adopt rules necessary for the implementation of the new section.

The Commission is not suited to remedy encroachments on public lands. The purpose of the Campaign Finance Law "is to provide transparency in the campaign finance process." HRS §11-301. Thus, the Commission regulates campaign finance. There are other state and county

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<sup>1</sup> The Commission will consider this measure at its February 15, 2017 meeting. At that time, staff will present its recommendations on this bill to the Commission.

agencies that are charged with the maintenance of public lands. For example, under HRS §171-6(12), the Board of Land and Natural Resources is authorized to bring actions “to remove or remedy encroachments upon public lands.”

Further, the bill may have First Amendment concerns because it is a content-based restriction on speech. The bill prohibits a form of political speech (“vote for candidate X”) on all public property. However, if the property is deemed a public forum or limited public forum, then the property is supposed to be open to all speech protected by the First Amendment. Any such content-based restriction would be subject to strict scrutiny if challenged in court. Another concern is that the bill discriminates among protected speech. The bill prohibits speech that supports a vote for a candidate but does not restrict speech that promotes opposition to a candidate (“do not vote for candidate X”). The Commission will defer discussion about the constitutionality of this bill to the Department of the Attorney General

Commission staff requests that this Committee hold this bill.

TESTIMONY  
THE LIBERTARIAN PARTY OF HAWAII  
c/o 1658 Liholiho St #205  
Honolulu, HI 96822

January 30 2017

RE: SB1153 to be heard Friday February 3, in Room 016 at 8:45 AM

To the members of the Senate Committee on Judiciary and Labor

We **oppose** this bill that aims to punish candidates for actions they may have no knowledge or control over. This bill creates a situation where persons opposed to a candidate could deliberately put up signs supposedly supporting him in remote areas of the state which may be far from his district.

Signed:



Tracy Ryan, Chair

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:** Submitted testimony for SB1153 on Feb 3, 2017 08:45AM  
**Date:** Wednesday, February 1, 2017 10:43:19 AM

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**SB1153**

Submitted on: 2/1/2017

Testimony for JDL on Feb 3, 2017 08:45AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Malia Espinda	Individual	Support	No

Comments: Support! Its February 2017 and I still see signs up all over Oahu.

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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