



STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

February 20, 2019

TO: The Honorable Sylvia Luke, Chair
House Committee on Finance

The Honorable Ty J.K. Cullen, Vice Chair
House Committee on Finance

Members of the House Committee on Finance

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

SUBJECT: **Testimony on H.B. No. 627, H.D. 1, Relating to Campaign Finance**

Thursday, February 21, 2019
1:30 p.m., Conference Room 308

Thank you for the opportunity to testify on this bill. The Campaign Spending Commission ("Commission") offers the following comments on this bill.

Section 1 of the bill adds a new section to Chapter 11, Hawaii Revised Statutes ("HRS") by requiring that a candidate who is supported by an independent expenditure report the expenditure as a contribution, and if an independent expenditure opposes a candidate, the candidates opposing that candidate must report the expenditure as a contribution. It also requires the Commission to notify applicable candidates when an independent expenditure is made as well as publish the reports required pursuant to this section on its website. Section 2 adds the definition of "opposing candidate" to HRS §11-302 and includes those terms in the definition of "contribution."

Section 3 and Section 4 amends HRS §11-341 and HRS §11-393, respectively, to require Super PACs to disclose the three top contributors¹, to their advertisements in their Statement of Information for Electioneering Communications and advertisement disclaimers. Notably, Section 4 amends HRS §11-393(c) by deleting the definition of "top contributor" which the Commission believes should be reinstated to provide guidance. Section 4 also eliminates the

¹ "Top contributor" is defined as a contributor who has contributed \$10,000 or more to a noncandidate committee within a twelve-month period prior to the purchase of an advertisement. See, HRS §11-393(c).

hardship exception from short duration advertisements broadcast by radio or television thereby requiring the disclosure of the three top contributors.

Requiring candidates to report independent expenditures as contributions could have dire consequences. In most cases, independent expenditures are costly. All candidates operate under campaign contribution limits. See, HRS §11-357. If a candidate had to report the cost of an independent advertisement as a contribution, that contribution would more than likely be an excess contribution and thus subject to a fine. Also, if the cost of an independent advertisement is reported as a contribution, being in-kind in nature, the candidate must also report the cost as an expenditure. If the candidate is a publicly funded candidate who has agreed to abide by the expenditure limit for the candidate's office, that candidate will need to, *inter alia*, return all public funds. See, Hawaii Administrative Rules §3-160-64(d)(2). As proposed, this new section treats independent expenditures as if they were coordinated with the candidate or candidate committee. This application is not currently presumed and must be proven by the Commission. It is thus an application that may be subject to judicial scrutiny. Further, the bill requires that the Commission notify affected candidates when a Super PAC makes an independent expenditure as well as publish the reports on its website. The Commission notes that it only becomes aware of independent expenditures when a Super PAC files its report on a reporting deadline or files a Statement of Electioneering Communication, both of which are posted on the Commission's website.



Hawaii

Holding Power Accountable

Common Cause Hawaii • 307A Kamani St. • Honolulu, HI 96813 • 808.275.6275

To: The House Committee on Finance
From: Brodie Lockard for the Common Cause Hawaii Board
Date: Thursday, February 21, 2019, 1:30 pm

In strong support of HB 627

Dear FIN Chair Luke, Vice Chair Cullen and Committee Members—

Common Cause Hawaii strongly supports HB 627. It should cost the State nothing.

Independent expenditures advocating for candidates benefit them at least as much as direct contributions, which can be used for anything from office supplies to pizza.

Independent expenditures advocating the defeat of a candidate clearly benefit all other candidates in a given race. A candidate may not approve of, or have control over, a negative ad about an opponent, but in the big picture, this provision should contribute strongly to a decrease in negative ads, making ads more civil and issue-focused, which can only improve the tone of elections and encourage broader public participation in them.

Disclosing all contributors to an advertisement is a necessary piece of the public's understanding of ads' true intent. Political ads can be very duplicitous, leading an audience to conclude the opposite of what facts support. Disclosing donors is a powerful antidote to this deceit.

Please pass HB 627, to justly classify independent expenditures, to help civilize campaign ads, and to keep campaign ads more honest.

Thank you for the opportunity to testify.

Brodie Lockard
Board Member, Common Cause Hawaii

TO: Members of the Committee on Finance

FROM: Natalie Iwasa
808-395-3233

HEARING: 1:30 p.m. Thursday, February 21, 2019

SUBJECT: HB627, HD1, Campaign Finance **COMMENTS**

Aloha Chair and Committee Members,

Thank you for allowing me the opportunity to provide testimony on HB627, HD1, which would require reporting of independent expenditures as contributions by candidate committees. I appreciate the amendments made in the HD1.

This bill currently has a blank for the value that would have to be reported by candidate committees.

Would these “contributions” count toward the maximum expenditures allowed for those who are receiving public funding? (I don’t think they should.)

Would this reporting make it more complicated to determine the actual amount spent on a particular candidate?

NOTES:

Make it easier to report. Better compliance.

Double entry required for in-kind donations. Multiple entries required for checks with more than one item.

Vendors vs payees for reimbursements.

Fix things like names, so look up more efficient.

Require reason for filing amended reports.

Double reporting of loans (upon receipt and when forgiven)

HB-627-HD-1

Submitted on: 2/19/2019 8:39:25 AM

Testimony for FIN on 2/21/2019 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dr Marion Ceruti	Individual	Oppose	No

Comments:

HB-627-HD-1

Submitted on: 2/19/2019 12:25:30 PM

Testimony for FIN on 2/21/2019 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Stefani jeremiah	Individual	Oppose	No

Comments:

HB-627-HD-1

Submitted on: 2/20/2019 4:40:26 AM

Testimony for FIN on 2/21/2019 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Caroline Kunitake	Individual	Support	No

Comments:

Dear FIN Chair Luke, Vice Chair Cullen and Committee Members—

I strongly support HB 627 HD1.

Independent expenditures advocating for candidates benefit them at least as much as direct contributions, which can be used for anything from office supplies to pizza.

Independent expenditures advocating the defeat of a candidate clearly benefit all other candidates in a given race. A candidate may not approve of, or have control over, a negative ad about an opponent, but in the big picture, this provision should contribute strongly to a decrease in negative ads, making ads more civil and issue-focused, which can only improve the tone of elections and encourage broader public participation in them.

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Please pass HB 627, to justly classify independent expenditures, to help civilize campaign ads, and to keep campaign ads more honest.

Thank you for the opportunity to testify.

Mahalo,

Caroline Kunitake

HB-627-HD-1

Submitted on: 2/20/2019 5:27:50 AM

Testimony for FIN on 2/21/2019 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Suellen Barton	Individual	Support	No

Comments:

HB-627-HD-1

Submitted on: 2/20/2019 7:10:22 AM

Testimony for FIN on 2/21/2019 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Catherine Roberts	Individual	Support	No

Comments:

Please send testimony! Priority bills

C



Common Cause Hawaii

to me
3 hours ago

Details



Dear Common Cause supporters—

Two priority bills are scheduled for a hearing by the House Finance Committee at 1:30 this Thursday, Feb 21. We could use your help with testimony to convince the committee to pass [HB1380](#) and [HB1248](#). Two other bills could use your support as well: [HB1153](#) and [HB627](#).

HB1380 HD1 would create a comprehensive public funding program for candidates for county elections beginning in 2022. Public funding is the gold standard of fair elections, free from the influence of special interest groups with deep pockets.

HB1248 HD1 would enact voting by mail uniformly across all counties for all elections commencing in 2020. Voting by mail makes it easier for everyone to participate in elections, and saves money compared to our current system.

HB1153 would require the House and Senate to each allow remote oral testimony at committee hearings, letting people on sister islands to testify via, e.g., Skype.

HB627 would classify any independent expenditure as a contribution to a candidate or as a contribution to each opposing candidate. And it would require any ad by a noncandidate committee to disclose all contributors for the ad.

There's sample testimony below. You can just copy and paste it, but using your own words always catch more attention. There is also detail below about how to submit testimony.

If you can make it to conference room 308 at the Capitol building, even better!

Mahalo for your kokua!

The Board of Common Cause Hawaii

SAMPLE TESTIMONY

Dear FIN Chair Luke, Vice Chair Cullen and Committee Members—

I strongly support HB 1380 HD1. I would only ask that the effective date of July 1, 2019 be reinstated.

HB 1380 takes several steps to ensure its financial viability and independence. Importantly, this bill funds itself via a surcharge on judicial fines, and does not operate when funds are insufficient. No moneys are taken from other sources to fund the program.

Publicly Funded Elections are the gold standard of campaign finance reform. The idea is fairly simple. Collect a base number of small contributions from constituents, decline all private funds, and your campaign is paid for by public money, up to a reasonably competitive amount. In return, you can spend all your fundraising time talking with voters, and owing no one but them. It's "the reform that makes all other reforms possible."

We live in a country where over 98 percent of the members of Congress are re-elected every year with no serious competition. In Maine and Arizona, Publicly Funded Elections costing under \$5 per taxpayer have increased voter turnout, the number and diversity of candidates (including women and people of color), candidate interaction with low- and moderate-income communities, and the number of contested races.

They have decreased the spending gap between winning and losing candidates, the role of special interests in government decision making, and the time candidates and officeholders spend fundraising. Publicly Funded-Elected candidates have passed some long-stalled laws for affordable prescription drugs, all-day kindergarten for the poorest schools, higher subsidies for community colleges, and financial help for working families needing child care.

Publicly Funded Election legislation has been adopted in Maine, Connecticut, Florida, Hawaii, Maryland, Michigan, Arizona, North Carolina, New Mexico, Wisconsin, Minnesota, Rhode Island, Vermont, West Virginia, and Massachusetts. It has also been incorporated at the municipal level in several cities.

People tend to be concerned about the cost to them, but tax breaks currently given to special interests cost them far more. What governmental expense is more important than supporting a healthy democracy? Most of Arizona's funding comes from a 10% surtax on civil and criminal penalties. Another approach would be to tax campaign ad buys themselves.

Please pass HB 1380 and let Publicly Funded Elections prove themselves.

Thank you for the opportunity to testify.

Dear FIN Chair Luke, Vice Chair Cullen and Committee Members—

I strongly support HB 1248 HD1.

Five states now use Vote by Mail to various degrees. It has increased voter turnout, with very little evidence of voter fraud.

Hawaii has had the lowest voter turnout of any state, for many years. VBM makes voting easy and convenient. The Hawaii State Office of Elections estimates approximately \$750,000 would be saved in each election cycle by converting to VBM. It requires fewer

voting machines, fewer polling places, fewer poll workers and fewer lines; and causes less confusion at polling places.

A verifiable paper trail is maintained for all ballots. Replacement ballots for lost or damaged ballots are available from the county clerks, who cancel the original ballot before issuing a replacement. In-person voting sites will continue to be available for voters who would like to vote in-person and to provide additional services to voters.

In recent years, voters have increasingly opted to vote by mail instead of voting in person at walk-in polling places. During the 2016 general election, 53.6% of Hawaii voters cast their ballots prior to Election Day.

Please pass HB 1248 and encourage voting for everyone in Hawaii.

Thank you for the opportunity to testify.

Dear FIN Chair Luke, Vice Chair Cullen and Committee Members—

I strongly support HB 1153 HD1.

We on Oahu are very lucky to be able to drive an hour or less and join a hearing at the Capitol to voice our opinion in the making of laws that shape our lives.

Not so for the third of our population that lives on sister islands. They can only email testimony and await the results of hearings deliberations, hopeful that their input has made

a difference. They are second-class participants in their own democracy, excluded from joining one of the most central steps of lawmaking, or even witnessing it.

Well-tested and fairly simple technology can solve this problem easily. It is not free, but is well worth the cost to include every Hawaii resident in this crucial segment of the lawmaking process.

Please pass HB 1153 and allow our neighbors to participate more fully in Hawaii's democracy.

Thank you for the opportunity to testify.

Dear FIN Chair Luke, Vice Chair Cullen and Committee Members—

I strongly support HB 627 HD1.

Independent expenditures advocating for candidates benefit them at least as much as direct contributions, which can be used for anything from office supplies to pizza.

Independent expenditures advocating the defeat of a candidate clearly benefit all other candidates in a given race. A candidate may not approve of, or have control over, a negative ad about an opponent, but in the big picture, this provision should contribute strongly to a decrease in negative ads, making ads more civil and issue-focused, which can only improve the tone of elections and encourage broader public participation in them.

Disclosing all contributors to an advertisement is a necessary piece of the public's understanding of ads' true intent. Political ads can be very duplicitous, leading an audience to conclude the opposite of what facts support. Disclosing donors is a powerful antidote to this deceit.

Please pass HB 627, to justly classify independent expenditures, to help civilize campaign ads, and to keep campaign ads more honest.

Thank you

HB-627-HD-1

Submitted on: 2/20/2019 8:02:18 AM

Testimony for FIN on 2/21/2019 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Anita Trubitt	Individual	Support	No

Comments:

HB-627-HD-1

Submitted on: 2/20/2019 8:42:54 AM

Testimony for FIN on 2/21/2019 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Nandoskar	Individual	Support	No

Comments:

HB-627-HD-1

Submitted on: 2/20/2019 9:12:01 AM

Testimony for FIN on 2/21/2019 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael deYcaza	Individual	Support	No

Comments:

HB-627-HD-1

Submitted on: 2/20/2019 9:28:53 AM

Testimony for FIN on 2/21/2019 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Christopher Boscole	Individual	Support	No

Comments:

Dear FIN Chair Luke, Vice Chair Cullen and Committee Members—

I strongly support HB 627 HD1.

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Thank you for the opportunity to testify.

Christopher Boscole

HB-627-HD-1

Submitted on: 2/20/2019 1:11:02 PM

Testimony for FIN on 2/21/2019 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jonathan Boyne	Individual	Support	No

Comments:

I strongly support HB 627 HD1.

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Please pass HB 627, to justly classify independent expenditures, to help civilize campaign ads, and to keep campaign ads more honest.

Thank you for the opportunity to testify.

HB-627-HD-1

Submitted on: 2/20/2019 2:14:54 PM

Testimony for FIN on 2/21/2019 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

HB-627-HD-1

Submitted on: 2/20/2019 2:37:21 PM

Testimony for FIN on 2/21/2019 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Shannon Rudolph	Individual	Support	No

Comments:

Strongly Support!

HB-627-HD-1

Submitted on: 2/20/2019 4:51:09 PM

Testimony for FIN on 2/21/2019 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Quinn	Individual	Support	No

Comments:

Dear Honorable Committee Members:

Please support HB627. Disclosure helps to mitigation some of the corruption found in campaign financing thereby enhancing our democracy.

Thank you for the opportunity to present my testimony.

Andrea Quinn

Kihei

LATE

HB-627-HD-1

Submitted on: 2/20/2019 8:03:41 PM

Testimony for FIN on 2/21/2019 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
L.M. Holmes	Individual	Support	No

Comments:

Aloha FIN Chair Luke, Vice Chair Cullen and Committee Members—

I strongly support HB 627 HD1.

Independent expenditures advocating for candidates benefit them at least as much as direct contributions, which can be used for anything from office supplies to pizza.

Independent expenditures advocating the defeat of a candidate clearly benefit all other candidates in a given race. A candidate may not approve of, or have control over, a negative ad about an opponent, but in the big picture, this provision should contribute strongly to a decrease in negative ads, making ads more civil and issue-focused, which can only improve the tone of elections and encourage broader public participation in them.

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Please pass HB 627, to justly classify independent expenditures, to help civilize campaign ads, and to keep campaign ads more honest.

Mahalo for the opportunity to testify.

Dr. Lorna Holmes, Honolulu 96817

LATE

HB-627-HD-1

Submitted on: 2/20/2019 10:21:51 PM

Testimony for FIN on 2/21/2019 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Diana Shaw	Lanai Community Health Center	Support	No

Comments:

LATE

HB-627-HD-1

Submitted on: 2/21/2019 8:06:13 AM

Testimony for FIN on 2/21/2019 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Greg Puppione	Individual	Support	No

Comments:

Dear FIN Chair Luke, Vice Chair Cullen and Committee Members—

I strongly support HB 627 HD1.

Independent expenditures advocating for candidates benefit them at least as much as direct contributions, which can be used for anything from office supplies to pizza.

Independent expenditures advocating the defeat of a candidate clearly benefit all other candidates in a given race. A candidate may not approve of, or have control over, a negative ad about an opponent, but in the big picture, this provision should contribute strongly to a decrease in negative ads, making ads more civil and issue-focused, which can only improve the tone of elections and encourage broader public participation in them.

Disclosing all contributors to an advertisement is a necessary piece of the public's understanding of ads' true intent. Political ads can be very duplicitous, leading an audience to conclude the opposite of what facts support. Disclosing donors is a powerful antidote to this deceit, and there is no compelling reason not to disclose this information. Free speech doesn't mean freedom from standing behind your words.

Please pass HB 627, to justly classify independent expenditures, to help civilize campaign ads, and to keep campaign ads more honest.

Thank you for the opportunity to testify. Aloha, Greg Puppione Honolulu, HI

From: bob-marion@hawaiiantel.net
Sent: Wednesday, February 20, 2019 9:07 PM
To: FINtestimony
Subject: support HB 627 HD1



Dear FIN Chair Luke, Vice Chair Cullen and Committee Members—

We strongly support HB 627 HD1.

Independent expenditures advocating for candidates benefit them at least as much as direct contributions, which can be used for anything from office supplies to pizza.

Independent expenditures advocating the defeat of a candidate clearly benefit all other candidates in a given race. A candidate may not approve of, or have control over, a negative ad about an opponent, but in the big picture, this provision should contribute strongly to a decrease in negative ads, making ads more civil and issue-focused, which can only improve the tone of elections and encourage broader public participation in them.

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Please pass HB 627, to justly classify independent expenditures, to help civilize campaign ads, and to keep campaign ads more honest.

Thank you for the opportunity to testify.

Sincerely,

Robert and Marion McHenry

HB-627-HD-1

Submitted on: 2/21/2019 10:52:04 AM

Testimony for FIN on 2/21/2019 1:30:00 PM



Submitted By	Organization	Testifier Position	Present at Hearing
Nathan Park	Common Cause Hawaii	Support	No

Comments:

Dear FIN Chair Luke, Vice Chair Cullen and Committee Members—

I strongly support HB 627 HD1.

Independent expenditures advocating for candidates benefit them at least as much as direct contributions, which can be used for anything from office supplies to pizza.

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Please pass HB 627, to justly classify independent expenditures, to help civilize campaign ads, and to keep campaign ads more honest.

Thank you for the opportunity to testify.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

H.B. NO. 627, H.D. 1, RELATING TO CAMPAIGN FINANCE

LATE

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Thursday, February 21, 2019

TIME: 1:30 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Clare E. Connors, Attorney General, or
Valri Lei Kunimoto, Deputy Attorney General

Chair Luke and Members of the Committee:

The Department of the Attorney General appreciates the intent of the bill and makes the following comments.

H.B. No. 627, H.D. 1, requires that a candidate who is supported by an independent expenditure to report the expenditure as a contribution of an unspecified value and, if an independent expenditure opposes a candidate, the candidates opposing that candidate must report that expenditure as a contribution. The bill also requires the Campaign Spending Commission (Commission) to notify the applicable candidates when any independent expenditure is made and to publish the reports required by this bill on its website. In section 4, the bill further deletes the definition of “top contributor” for the statutory provisions that require identification of the three top contributors to noncandidate committees in an advertisement.

Noncandidate committees that make independent expenditures are referred to as SuperPacs. In Citizens United v. Federal Election Commission, 558 U.S. 310 (2010), the U.S. Supreme Court held that the government cannot prohibit corporations or other associations from making independent expenditures that are not coordinated with a specific political campaign because political speech is protected under the free speech clause of the First Amendment to the U.S. Constitution. Laws that burden political speech are subject to strict scrutiny for a violation of the First Amendment and requires the government to prove that the restriction furthers a compelling interest and is

narrowly tailored to achieve that interest. After Citizens United, consistent with the First Amendment, SuperPacs may receive an unlimited amount of contributions from corporations and spend unlimited amounts on independent expenditures to advocate for and against candidates or ballot questions. SpeechNow.org v. Federal Election Commission, 599 F.3d 686 (2010) (Limiting contributions by individuals to political committees that made only independent expenditures that expressly advocated the election or defeat of a candidate, violated First Amendment free speech rights.)

SuperPacs make independent expenditures to advocate for a candidate or ballot measure; they do not make contributions to candidate committees. If the expenditures are coordinated with candidate committees, the expenditures would not be independent and may be subject to contribution limits. The Department believes that treating independent expenditures from noncandidate committees as contributions to candidate committees blurs and confuses the independent nature of the expenditure for SuperPacs and may have a chilling effect on the amounts that they may otherwise spend and thereby impact the free speech rights of the individuals and corporations supporting the SuperPacs. The Department respectfully recommends that this provision be deleted from the bill because the provision is subject to constitutional challenge.

The Department also has concerns that the bill deletes the definition of "top contributor" from section 11-393, Hawaii Revised Statutes, in section 4 of the bill. In 2013, when the top contributor provisions were being considered by the Legislature, the Department recommended the threshold be raised from \$5,000 to \$10,000 and the number of top contributors be decreased from five to three to strengthen the provision to withstand a potential constitutional challenge. The Campaign Spending Commission's data from the 2012 election supported the 2013 recommendations; the data demonstrated disclosure would not be reduced due to the changes as there were contributions far larger than \$10,000 to the SuperPacs and typically the SuperPacs had a very small number of big money contributors. The legislative history from 2013 supported the inclusion of the \$10,000 contribution threshold and the Department recommends that the definition be retained. If the definition is deleted, the Department

respectfully recommends that a detailed purpose section be added to the bill to support the bill's amendments against a constitutional challenge and discuss why the additional disclosure of smaller contributors is necessary in Hawaii. The legislative history should also include supporting details from the recent 2018 election that supports the need for additional disclosure.

Thank you for the opportunity to testify on this bill.