



STATE OF HAWAII  
CAMPAIGN SPENDING COMMISSION

235 SOUTH BERETANIA STREET, ROOM 300  
HONOLULU, HAWAII 96813

January 31, 2019

TO: The Honorable Chris Lee, 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 *T.B.*  
Campaign Spending Commission *For*

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

Friday, February 1, 2019  
2:00 p.m., Conference Room 325

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 two new sections to Chapter 11, Hawaii Revised Statutes (“HRS”). The first provides that candidate and noncandidate committees must report a “photographic appearance contribution” as a \$1 in-kind contribution and mandates a \$1,000 fine for candidate and noncandidate committees who use a photograph as a photographic appearance contribution if the use has not been authorized by the person appearing in the photograph. The second added section requires 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.

Section 2 of the bill adds the definition of “opposing candidate” and “photographic appearance contribution” 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 all contributors, rather than just the top contributors<sup>1</sup>, to their

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<sup>1</sup> “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. HRS §11-393(c).

advertisements in their Statement of Information for Electioneering Communications and advertisement disclaimers.

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. 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. Hawaii Administrative Rules §3-160-(d)(2).

Also, the "top contributor" provision, with the definition of top contributor being a person who has made a contribution of \$10,000 or more within the twelve months preceding the purchase of the advertisement may be a constitutional threshold. Although that threshold may be too high, to require Super PACs to disclose **all** contributors in their advertisements, as well as in their periodic reports, may be unduly burdensome and thus unconstitutional.



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

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**LATE**

**ON THE FOLLOWING MEASURE:**

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

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY

**DATE:** Friday, February 1, 2019

**TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 325

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

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Chair Lee and Members of the Committee:

The Department opposes the amendments proposed by sections 3 and 4 of H.B. 627.

H.B. No. 627 establishes additional requirements for reports to the Campaign Spending Commission. This bill requires candidates and candidate and noncandidate committees that use a photograph of a person in a campaign to report such use as a "photographic appearance contribution" and as a \$1 in-kind contribution, and imposes a \$1,000 fine if they use a photograph that has not been authorized by the person appearing in the photograph. The bill also requires a candidate's candidate committee to report as a contribution, the expenditure of an "independent expenditure" if it favors that committee's candidate and, conversely, if the expenditure advocates the defeat of that candidate, a report is required of the opposing candidate's candidate committees.

In sections 3 and 4, the bill requires noncandidate committees that make only independent expenditures without coordination with any candidate (also known as SuperPacs) to disclose all contributors rather than just the top contributors.

The Department supports the general intent of the bill to increase disclosure and transparency in campaign contributions. The disclosure provisions allow Hawai'i citizens to identify which individuals and organizations are seeking to influence their vote. In keeping with this transparency, the Department opposes the elimination of the

disclosure and identification of the "top contributors," and has concerns about the inclusion of all contributors, in the SuperPacs' advertisements.

Eliminating the top three contributors and including all of the smaller contributors, may invite a constitutional challenge because of the arguably increased burden on the SuperPacs and interference with the advertisement's message to include all contributors.

If sections 3 and 4 advance as is, we note a need for a detailed purpose section to be added to this bill to support the amendments against a constitutional challenge. In order to demonstrate that the law can survive constitutional scrutiny by the courts, the Department recommends that a purpose section be included to discuss why the additional disclosure, particularly the elimination of the top three contributors and expansion to all contributors, is necessary in Hawaii. The legislative history should also include any details from the recent 2018 election that support the need for additional disclosure.

In reviewing the legislative history, in 2013, the Department recommended that the proposed threshold level of \$5,000 be raised to \$10,000 and the number of top contributors to be decreased from five to three to strengthen the provision for the purpose of withstanding 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 far larger contributions than \$10,000 to the SuperPacs and typically the SuperPacs had a very small number of big money contributors.

Thank you for the opportunity to testify on this matter.

**HB-627**

Submitted on: 1/31/2019 2:06:56 PM

Testimony for JUD on 2/1/2019 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Barbara Polk	Common Cause Hawaii	Support	No

Comments:

Aloha Chair Lee and Vice Chair San Buenaventura,

Common Cause is in general support of HB627 and appreciates it's intent to increase transparency of expenditures by non-candidate committees (NCC). However we have a couple of concerns.

Although we understand and appreciate the rationale behind considering ads as donations to candidate or candiddate committees, there is a problem in applicaiton of that requirement. In most races, there are more than two candidates. If an NCC publishes an ad attacking a candidate, to which of the other candidates would that count as a contribution? For minor parties, with very little funding, such an unsought "contribution", that would likely benefit them little, if at all, might well trigger their having to engage in extensive reporting which would otherwise be unnecessary.

We are also believe that while all contributions to a NCC should be reported, it probably would not be possible in most cases to list *on an ad*, all the contributors to that ad. We suggest that this requirement be deleted, and the statute returned to its current form with respect to electioneering communications.

We support this bill and urge you to pass it with amendments.

TO: Members of the Committee on Judiciary

FROM: Natalie Iwasa  
808-395-3233

HEARING: 2 p.m. Friday, February 1, 2019

SUBJECT: HB627, Campaign Finance  
Reporting Photographic Appearances – **OPPOSED**

Aloha Chair and Committee Members,

Thank you for allowing me the opportunity to provide testimony on HB627, which would require reporting in-kind donations for the use of a “photographic appearance,” establishes a fine for use of a photo without the person’s consent and makes other changes.

Photographic Appearance Contribution - **Opposed**

I oppose the requirement to report a “photographic appearance contribution” of \$1 for the use of someone’s image in a campaign. This would make reporting more difficult, and I see no public benefit. Reporting is already complicated, mainly due to the software used to facilitate that reporting, and adding this requirement will likely make it harder for less experienced candidates to comply.

Independent Expenditure Contribution – **Comments**

“Independent expenditures” means an expenditure expressly advocating the election or defeat of a clearly identified candidate that is not made in concert or cooperation with or at the suggestion of the candidate, the candidate committee, a party, or their agents. The proposed change in this bill would require candidate committees to report these expenditures on their own when they become aware of the expenditure. The dollar amount is not specified.

How would this be enforced?

Would these expenditures count toward the maximum allowed for those who are receiving public funding?

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

This requirement would make reporting more complicated and time consuming without a clear benefit to the public.