

Presentation To The
Committee on Judiciary
February 5, 2019 at 2:05 p.m.
State Capitol Conference Room 325

Testimony in Opposition to House Bill 1251

TO: The Honorable Chris Lee, Chair, Committee on Judiciary
The Joy A. San Buenaventura, Vice Chair Committee on Judiciary
Members of the Committee

My name is Neal K. Okabayashi, the Executive Director of the Hawaii Bankers Association (HBA). HBA is the trade association representing eight Hawaii banks and three banks from the continent with branches in Hawai'i. The HBA opposes HB 1251 because it will duplicate existing reports, causing an undue burden in preparing and delivering the disclosures, and is not necessary to address issues related to campaign spending violations.

HB 1251 is a good faith effort to address certain campaign spending issues but it does not address the problem because corporations do not cause substantive problems. The Hawaii Campaign Spending Commission annual reports from 2007 to 2018 reveals significant violations were not committed by corporations but rather by others. Even in the Yamada case cited in the bill's preamble, it was an issue of law as to constitutionality of certain provisions rather than blatant, unconcealed violations of campaign spending. In fact, the Court in the Yamada case said the Hawaii campaign spending reporting and disclosure requirements were doing exactly what this bill intends to do.

This bill proposes to require domestic and foreign corporations doing business in Hawaii that breach a \$10,000 threshold of contributions and independent expenditures in a year shall disclose certain information to their shareholders annually. Thus, it is possible that companies as large as Amazon or as small as Mom and Pop, Inc. will have to disclose the information but the bill does not state how the disclosure is to be made other than to require it shall be delivered. Hawaii law requires corporations to conduct an annual meeting but does not require an annual report to shareholders. Hawaii law does require an annual report to be filed with DBREG which contains only certain corporate information such as address and name of officers and directors. The annual report is usually a page or two and is longer only if the list of officers and directors is lengthy. No financial information is contained in the report to DBREG.

Undue Burden or Unduly Onerous

As reflected in the Yamada decision, a factor to be considered as to the legality of a campaign spending law is whether it places an undue burden or is unduly onerous.

It is highly likely that corporations doing business in Hawaii are not large corporations but small corporations which may lack the resources to comply with the law, such as delivering the disclosure to shareholders.

According to the State of Hawaii data book prepared by DBEDT, as of the end of fiscal year 2017, there were 29,280 corporations and 13,369 foreign (non-Hawaii) corporations in Hawaii, or a total of 42,649 corporations. To require all of those corporations to consider whether it is subject to the law and possibly disseminate the required information to all of its shareholders is an undue burden which does not accomplish the desired result.

With 42,649 corporations, the number of shareholders is difficult to quantify but it is definitely large. Corporations that do not contribute in sufficient amounts to breach the threshold still must track contributions to ensure they are not over the limit, which may be breached inadvertently.

The bill assumes that the corporation knows the identity of its shareholders. While that may be true for a small corporation, it is not true for a larger company, especially one whose shares are publicly traded. For such companies, the identity is not known because the shares are usually held in “street names” by brokerages and mutual funds, or another form of nominee.

Vague and Unclear Requirements

This bill may lead to litigation based on the requirement that the corporation identify “the specific monetary or nonmonetary benefit that accrued to the domestic or foreign corporation as a direct result” of the contributions and independent expenditures. The term “specific monetary or nonmonetary benefit” is undefined and is so vague as to render the corporation in a quandary when calculating the benefit.

Duplication

Already, the Hawaii Campaign Spending laws requires disclosure by a corporation with contributions over \$1,000. This is sufficient and adequate disclosure. The reports filed with the Campaign Spending Commission are available online on the Commission’s website. As stated in the Yamada case: “Second, Hawaii’s reporting and disclosure obligation ‘deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity.’” The opinion continues to say: “Third, the registration, record keeping, reporting and disclosure requirements provide a means of detecting violations of valid contribution limitations, preventing circumvention of Hawaii’s campaign spending limitations ... “ Thus, there is no need to add to the reporting requirements.

Unlevel Playing Field

We certainly are not suggesting that other organizational entities, such as unions, limited liability companies and federal corporations, also be subject to this proposed bill but the disparity of treatment does suggest that targeting corporations when there are adequate safeguards already in place to require reporting and disclosures is imprudent.

Thank you for the opportunity to submit this testimony on HB 1251 and please let us know if we can provide further information.

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ATTORNEYS AT LAW

February 4, 2019

Honorable Chris Lee, Chair
Honorable Joy A. San Buenaventura, Vice Chair
Committee on Judiciary
House of Representatives
State Capitol
415 South Beretania Street
Honolulu, Hawai'i 96813

Re: H.B. NO. 1251, RELATING TO CORPORATIONS

Dear Chair Lee, Vice Chair San Buenaventura and Committee Members:

On behalf of the American Family Life Assurance Company of Columbus (AFLAC), we respectfully submit the following written comments on House Bill No. 1251, relating to corporations, which is to be heard by your Committee on Judiciary on February 4, 2019.

House Bill No. 1251 would require domestic and foreign corporations to provide their shareholders with reports of independent expenditures and political contributions. We note the concerns raised by the Hawaii Bankers Association in connection with Senate Bill No. 96, the companion to House Bill No. 1251, and request that they be considered in connection with House Bill No. 1251.

If the Committee on Judiciary is inclined to move House Bill No. 1251 forward, we respectfully request that the measure be amended to expressly provide that a corporation be allowed to post the required report on its website, as requiring publicly-trade companies such as AFLAC to mail the reports to individual shareholders would be prohibitively burdensome and costly.

Thank you for your consideration of the foregoing.

Very truly yours,

MCCORRISTON MILLER MUKAI MACKINNON LLP



Peter J. Hamasaki

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