



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 *KI*
Campaign Spending Commission

SUBJECT: **Testimony on H.B. No. 162, H.D. 1, Relating to Violations of Campaign Finance Law**

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

Thank you for the opportunity to testify on this bill.¹ The Campaign Spending Commission ("Commission") supports the original version of the bill and offers comments with respect to H.D. 1.

Section 1 is a new provision which prohibits the establishment of noncandidate committees that only make independent expenditures (Super PAC) within fourteen (14) days of any election. While the Commission appreciates the intent behind this provision which supports disclosure, transparency, and accountability of Super PAC activity, we have constitutional concerns on whether the law can prohibit when a Super PAC is formed.

This bill amends Hawaii Revised Statutes ("HRS") §11-410 by amending subsection (a)(1) by replacing "an individual" with "a person other than a noncandidate committee that makes only independent expenditures" and amending subsection (a)(2) by replacing "corporation, organization, association, or labor union" with "noncandidate committee that makes only independent expenditures and has either received at least one contribution of more than \$10,000 from any one person or has made expenditures of more than \$10,000 in the aggregate, in an election period." The bill also increases the amount of a fine that the Commission may assess against a Super PAC from an amount not to exceed \$1,000 to an amount not to exceed \$5,000 or an amount not exceeding three times an unlawful contribution or

¹ The companion bill is S.B. 137.

expenditure. The increase in the amount of the fine is necessary in enforcement cases against Super PACs. Further, the trebling of the amount of an unlawful contribution or expenditure as a fine is already applicable to individuals. It makes sense to extend this potential increased fine to Super PACs. The Commission believes that the higher fine amount will be a more effective deterrent for Super PACs. Notably, H.D. 1 further holds the individual directors, officers, or agents of the Super PAC accountable if they knowingly authorized, ordered, or done any of the acts constituting the violation.

The bill also allows the Commission to assess fines against the officers of noncandidate committees. Presently, subsection (c) authorizes the Commission to order that fines be paid out of a candidate's personal funds.

Finally, this bill deletes the reference to political activities of liquor commission employees (HRS §281-22) in subsection (a).

The Commission requests that this Committee pass the original version of this measure.



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COMMITTEE ON FINANCE

THURSDAY, 2/21/19, 1:30 PM, Room 308
HB162 HD1, RELATING TO VIOLATIONS OF CAMPAIGN FINANCE LAW
TESTIMONY

Beppie Shapiro, Legislative Committee, League of Women Voters of Hawaii

Chair LUKE, Vice-Chair CULLEN, and Committee Members:

The League of Women Voters of Hawaii **supports HB162 HD1** that amends definitions as the Campaign Spending Commission recommends; in addition and most importantly for the League's support, HB 162 HD1 increases fines for violations by independent expenditure committees (Super PACS), and allows CSC to collect fines from the officers of non-candidate committees as well as from the candidate him or herself.

Thank you for the opportunity to submit testimony.



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

LATE

ON THE FOLLOWING MEASURE:

H.B. NO. 162, H.D. 1, RELATING TO VIOLATIONS OF THE CAMPAIGN FINANCE LAW.

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. 162, H.D. 1, increases the amount of the administrative fine that may be assessed against a noncandidate committee that makes only independent expenditures (or SuperPac) for campaign spending law violations in certain circumstances. The bill also allows the Campaign Spending Commission (Commission) to order that the payment of a fine assessed against a noncandidate committee may be paid from the personal funds of an officer of the noncandidate committee. This measure increases the Commission's ability to assess effective penalties against large political action committees for violations of campaign spending laws. In addition, the bill also prohibits the establishment of a noncandidate committee within fourteen days of an election.

The Department has concerns that the prohibition on the creation or establishment of a SuperPac within fourteen days of an election may be subject to a constitutional challenge under Citizens United v. Federal Election Commission, 558 U.S. 310 (2010) (The government cannot prohibit corporations from making independent expenditures that are not coordinated with a specific political campaign because political speech is protected under the First Amendment of the 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. This bill prohibits the establishment of a noncandidate committee under our campaign finance law and completely bars the independent corporate expenditures for electioneering communications and therefore may be found to be violative of the First Amendment.

The Department respectfully recommends that the prohibition against establishing a noncandidate committee within fourteen days of an election be deleted from the bill.

Thank you for the opportunity to testify on this matter.