



STATE OF HAWAII  
CAMPAIGN SPENDING COMMISSION

235 SOUTH BERETANIA STREET, ROOM 300  
HONOLULU, HAWAII 96813

March 8, 2019

TO: The Honorable Karl Rhoads, Chair  
Senate Committee on Judiciary

The Honorable Glenn Wakai, Vice Chair  
Senate Committee on Judiciary

Members of the Senate Committee on Judiciary

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

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

Tuesday, March 12, 2019  
9:00 a.m., Conference Room 016

Thank you for the opportunity to testify on this bill.<sup>1</sup> 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

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<sup>1</sup> 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.



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

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**ON THE FOLLOWING MEASURE:**

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

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY

**DATE:** Tuesday, March 12, 2019

**TIME:** 9:00 a.m.

**LOCATION:** State Capitol, Room 016

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

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Chair Rhoads 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 which 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. Therefore, it 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 in section 1 of the bill be deleted.

Thank you for the opportunity to testify on this matter.



**LATE**

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COMMITTEE ON JUDICIARY

TUESDAY, 3/12/19, 9 AM, Room 016  
HB162 HD1 RELATING TO VIOLATIONS OF CAMPAIGN FINANCE LAW  
**TESTIMONY**

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

Chair Rhoads, Vice-Chair Wakai and Committee Members:

The League of Women Voters of Hawaii **supports HB162 HD1** that 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.

HB162 HD1 also prevents creation of independent expenditure committees very shortly before elections, which gives voters and “watchdogs” time to assess the purpose and influence of the Super Pac.

Please support this bill.

Thank you for the opportunity to present this testimony.