



**STATE OF HAWAII**  
**CAMPAIGN SPENDING COMMISSION**

235 SOUTH BERETANIA STREET, ROOM 300  
HONOLULU, HAWAII 96813

March 12, 2019

TO: The Honorable Karl Roads, 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 *KI*  
Campaign Spending Commission

**SUBJECT: Testimony on H.B. No. 164, H.D. 1 Relating to Electioneering Communications**

Thursday, March 14, 2019  
9:30 a.m., Conference Room 016

Thank you for the opportunity to testify on this bill.<sup>1</sup> The Campaign Spending Commission (“Commission”) opposes H.B. No. 164, H.D. 1, as written, and requests that the bill as originally proposed by the Commission is restored.

Section 2 in HD 1 proposes to exempt advertisements by candidates from the reporting requirements of Hawaii Revised Statutes (“HRS”) §11-341. Specifically, this means that candidates and candidate committees would not need to file statements of information for electioneering communications (“statements”) once the committee spends an aggregate amount of more than \$2,000 during a calendar year. As proposed, electioneering communications are advertisements to vote for the candidate that are broadcast from a cable, satellite, television, or radio station; published in any periodical or newspaper or by electronic means (which includes Facebook boosts, Google ads, or other social media); or, mailed. This will actually decrease transparency in campaign spending in elections which the Commission cannot support.

Section 2 also eliminates the requirement that organizations other than a candidate or noncandidate committee must file a statement with the names and addresses of all persons who contributed to the organization for the purpose of publishing or broadcasting the advertisement. In effect, this eliminates the requirement that individuals who are not noncandidate committees would need to file the statement when they spend the requisite amount which also decreases

---

<sup>1</sup> The companion bill is S.B. No. 139.

transparency in campaign spending in elections which the Commission cannot support. In the 2018 election, a couple spent approximately \$30,000 in Facebook advertisements supporting multiple candidates in the Maui general election. They filed five statements reporting these expenditures and did not qualify as a noncandidate committee. This proposal will eliminate the requirement that they report their electioneering communications.

Section 2 expands the definition of “disclosure date” to include the date that any electioneering communication in any amount is publicly distributed on any social media platform. The Commission notes that social media platform expenses typically are inexpensive and reoccurring, and thus, requiring a statement to be filed each time a social media communication is published will be challenging and onerous.

Lastly, Section 2 defines “electioneering communication” as an advertisement that is made within 90 days, rather than 30 and 60 days, prior to an election. The Commission notes that this is a much larger window for regulation and requests that the committee restore the 30 days prior to the primary or initial special election and within 60 days prior to the general or special election. The Commission believes that the current time designation is appropriate and reflective of when electioneering communication spending actively occurs before an election.

Section 3 amends HRS §11-393 to require that any advertisement by a Super PAC must disclose its top three contributors who paid for the advertisement; however, it eliminates the definition of “top contributor.”<sup>2</sup> This section also eliminates the hardship exception from short duration advertisements broadcast by radio or television thereby requiring the disclosure of the 3 top contributors. In the 2018 election, there were 16 contributors to 11 of the 16 Super PACs who qualified as a “top contributor.” Without the definition of “top contributor,” there were 43 contributors who gave to 16 Super PACs in the 2018 election. Thus, removing the definition of “top contributor” may expand transparency, but the Commission defers to the Department of the Attorney General as to whether the impact of this section poses any constitutional concerns.

---

<sup>2</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).



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

---

**ON THE FOLLOWING MEASURE:**

H.B. NO. 164, H.D. 1, RELATING TO ELECTIONEERING COMMUNICATIONS.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY

**DATE:** Thursday, March 14, 2019

**TIME:** 9:30 a.m.

**LOCATION:** State Capitol, Room 016

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

---

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. 164, H.D. 1, amends the filing requirements for statements of information for electioneering communications of more than \$2,000 in the aggregate during any calendar year. H.D. 1 requires that only noncandidate committees must file the statements of information for electioneering communications and expands the definitions of "disclosure date" and "electioneering communication." The bill also deletes the definition of "top contributor" for noncandidate committees that make only independent expenditures, also known as SuperPacs.

The Department agrees with the intent of the bill to provide voters with greater transparency and reporting for noncandidate committees but has concerns that the bill deletes the definition of "top contributor" from section 11-393, Hawaii Revised Statutes (HRS), in section 3 of the bill. That section requires advertisements paid by SuperPacs to include the names of top three contributors to the committee that paid for the advertisement. "Top contributor" is defined as a contributor who has contributed an aggregate amount of \$10,000 or more to a noncandidate committee within a twelve-month period prior to the purchase of an advertisement. In 2013, when the top contributor provisions were being considered by the Legislature, the Department recommended amendments to the top contributor definition to strengthen the provision

to withstand a potential constitutional challenge. The Campaign Spending Commission's data from the 2012 election and the legislative history from 2013 support the inclusion of the \$10,000 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 of smaller contributors.

Thank you for the opportunity to testify on this matter.



Testimony of Chris Leonard  
President – Hawaii Association of Broadcasters, Inc.  
President – New West Broadcasting Corp.  
Regarding HB 164 HD1, Relating to Electioneering Communications

Before the Senate Committee on Judiciary  
March 14, 2019

#### RELATING TO ELECTIONEERING COMMUNICATIONS

Good afternoon Chairman Rhodes, Vice Chair Wakai and members of the committee. For the record, my name is Chris Leonard and I am the President of New West Broadcasting Corp. We are a locally-owned broadcast company that owns and operates five radio stations in Hilo and Kona. I am also the President of the Hawaii Association of Broadcasters. The Association represents over 100 Television & Radio stations that serve local communities across the State of Hawaii. I provide this testimony regarding HB164 HD1

I agree that democracy is best served when voters are informed about the sources of advertising seeking to influence the outcome of each election, however I have concerns about the vagueness of some of the language in this bill. We are not opposing the changing of the threshold from \$10,000 to \$2,000, however in the changes proposed by HB 164 HD1, it appears that this bill may remove the exemption provided in 11-393 Sec 4, subsection C that stated,

*“this section shall not apply to advertisements broadcast by radio or television of such short duration that including a list of top contributors would constitute a hardship...”*

It is unclear as to whether or not HB164 HD1 would remove this provision. If it does, it will be a practical impossibility to fit a list the top contributors in addition to the already required disclaimer which includes the non-candidate committee name, complete address and notice that it is with/without the approval and authority of the candidate in a 15 or 30 second commercial especially on radio. Broadcasters are required by Federal law to keep detailed records of all political advertising including non-candidate issue advertising. These records include detailed information on what is purchased, by what organization, their address and the

individual or individuals that are directly responsible for the advertising. These files are required to be posted on each broadcast station's public file which is available online 24/7 for public review.

Chairman Rhodes, Vice Chair Wakai and committee members, we appreciate your time and consideration of this bill which supports transparency. We support transparency as well, however, we ask that you ensure that the provision that protects these "short-duration" advertisements as contained in 11-393 Sec 4, subsection C are protected and/or added to this bill.

Sincerely,

Chris Leonard  
President  
Hawaii Association of Broadcasters

President / General Manager  
New West Broadcasting Corp.