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TESTIMONY OF THE
CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS
TO THE SENATE COMMITTEE ON JUDICIARY
ON HOUSE BILL NO. 2738, HD 1
RELATING TO CAMPAIGN FINANCE

March 10, 2020

Chair Rhoads and members of the Senate Committee on Judiciary, thank you for the opportunity to provide comments on House Bill No. 2738, HD 1. The purpose of this bill is to prohibit foreign nationals and foreign corporations from making independent expenditures; require every corporation that contributes or expends funds in a state election to file a statement of certification regarding its limited foreign influence; and require noncandidate committees making only independent expenditures to obtain a statement of certification from each top contributor required to be listed in an advertisement.

This bill amends HRS § 11-356(d) & (e) to provide for certifications regarding certain contributions or expenditures to be filed with the Chief Election Officer. As our office has no jurisdiction over campaign financing, we believe these certifications would be more appropriately filed with the Campaign Spending Commission.

Thank you for the opportunity to testify on House Bill No. 2738, HD 1.



STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

March 9, 2020

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

The Honorable Jarrett Keohokalole, 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. 2738, H.D. 1, Relating to Campaign Finance**

Tuesday, March 10, 2020
10:00 a.m., Conference Room 016

Thank you for the opportunity to testify on this bill. The Campaign Spending Commission (“Commission”) appreciates the intent of this bill and offers the following comments.

This purpose of the bill is to prohibit foreign influence on state governance by (1) prohibiting foreign nationals and foreign corporations from making independent expenditures,¹ (2) requiring corporations that contribute or expend funds in a State election to file a statement of certification with the Chief Election Officer regarding their status as a foreign corporation, and (3) require noncandidate committees to obtain a statement of certification from top contributors that the funds used by the top contributors were not derived from a foreign corporation.

Section 3 of the bill amends subsection (b) of Hawaii Revised Statutes §11-356 (page 5, lines 11-12) by replacing “A **foreign owned domestic corporation** may make contributions . . .” with “A **foreign corporation** may make a contribution . . .”² This amendment does not make sense. Although the amendment to the subsection states that a foreign corporation may make a contribution, paragraph (1) conditions the foreign corporation’s contribution on the fact that “no foreign national or foreign corporation participated in the foreign corporation’s election-related activities, including decisions concerning contributions, . . .” Thus, a foreign corporation, could

¹ Foreign nationals and foreign corporations are already prohibited from making contributions. Hawaii Revised Statutes §11-356.

² Emphases added.

not make a contribution since the foreign corporation itself would necessarily be involved with the decision to contribute. The Commission recommends that this Committee restore the language that allows a foreign owned domestic corporation rather than a foreign corporation to make contributions, under limited circumstances. Then the highlighted language would make sense. That is, a domestic corporation that is foreign owned, may make contributions or expenditures so long as (1) no foreign national or foreign corporation participated in election-related activities **and**³ (2) the funds used for the contributions or expenditures are domestically derived.⁴

Also, since the responsibility for enforcement of the amendments proposed by the bill falls upon the Commission, rather than the Office of Elections, the Commission believes that the statement of certification required by Section 3 of the bill (page 6, line 7-8) should be filed with the Commission, instead of the Chief Election Officer. The Commission defers to the Department of the Attorney General for any constitutional implications this bill may have.

³ This should be an “and” rather than an “or.”

⁴ This comment also applies to the bill’s language at page 6, lines 13-14 pertaining to the statement of certification requirement.

Statement Before The
SENATE COMMITTEE ON JUDICIARY
Tuesday, March 10, 2020
10:00 AM
State Capitol, Conference Room 016

in consideration of
HB 2738, HD1
RELATING TO CAMPAIGN FINANCE.

Chair RHOADS, Vice Chair KEOHOKALOLE, and Members of the Senate Judiciary Committee

Common Cause Hawaii supports HB 2738, HD1, which (1) prohibits foreign nationals and foreign corporations from making independent expenditures, (2) requires every corporation that contributes or expends funds in a state election to file a statement of certification regarding its limited foreign influence, and (3) requires noncandidate committees making only independent expenditures to obtain a statement of certification from each top contributor required to be listed in an advertisement.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening democracy through improving our campaign finance system with laws that amplify the voices of everyday Americans by requiring strong disclosures and making sure everyone plays by the same commonsense rules.

Foreign nationals are prohibited from making contributions, donations or expenditures in connection with any election, including state and local elections. 52 U.S.C. § 30121. Additionally, foreign nationals may not donate to noncandidate committees or fund electioneering communications. *Id.* Foreign nationals are defined as foreign governments, foreign political parties, foreign corporations, foreign associations, foreign partnerships, and individuals with foreign citizenship unless they have “green cards” indicating they have been lawfully admitted for permanent residence. 22 U.S.C. § 611(b).

Common Cause Hawaii supports HB 2738, HD1’s prohibition on foreign national’s and foreign corporation’s making independent expenditures in Hawaii’s elections.

HB 2738, HD1, however, further provides, on pages 6 and 7, that foreign corporations may make contributions to or an expenditure on behalf of a candidate, candidate committee, or a noncandidate committee, pursuant to certain exceptions. Domestic subsidiaries of foreign corporations may contribute to non-candidate committees only so long as the foreign parent does not finance the non-candidate committee’s activities through the subsidiary and no individual foreign national participates in the operation of the non-candidate committee or makes any decisions regarding its contributions or expenditures. Hawaii Revised Statutes § 11-356(b). These exceptions to permit domestic subsidiaries

of foreign corporations to establish political action committees, *see* <https://www.fec.gov/updates/foreign-nationals/>, could swallow the rule to prevent foreign corporations from influencing our elections.

Common Cause Hawaii supports HB 2738, HD1's disclosure requirements of corporations, which are found on pages 6-7 Section 3 of the bill. These disclosure requirements will assist with transparency in our elections, allow people to know who/what is funding which candidates, and assist with limiting the influence of foreign corporate spending in state elections permitted by the PAC exceptions. We suggest that the same disclosures may be dual filed with both the Chief Election Officer and the Hawaii Campaign Spending Commission (HCSC), as the HCSC has jurisdiction over campaign finance matters.

Thank you for the opportunity to testify in support of HB 2738, HD1. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii



Pono Hawai'i Initiative

Josh Frost - President • Patrick Shea - Treasurer • Kristin Hamada
Nelson Ho • Summer Starr

Tuesday, March 10, 2020

Relating to Campaign Finance
Testifying in Support with Amendments

Aloha Chair and members of the committee,

The Pono Hawai'i Initiative (PHI) **supports HB2738, HD1 Relating to Campaign Finance**, which prohibits foreign nationals and foreign corporations from making independent expenditures in connection with any elections, including state and local elections.

Foreign nationals are defined as foreign governments and should not be involved in our elections. The measure does allow for foreign corporations to make contributions or expenditures on behalf of the candidate with certain restrictions and requires disclosure to ensure transparency.

For all these reasons, we urge you to **amend** this measure to give it a **clean effective date**.

Mahalo for the opportunity,
Gary Hooser
Executive Director
Pono Hawai'i Initiative



ADA

HAWAII

AMERICANS FOR DEMOCRATIC ACTION

OFFICERS

John Bickel, President
Alan Burdick, Vice President
Marsha Schweitzer, Treasurer
Doug Pyle, Secretary

DIRECTORS

Melodie Aduja
Juliet Begley
Ken Farn
Stephanie Fitzpatrick
Chuck Huxel
Jan Lubin
Jenny Nomura
Dave Nagaji

MAILING ADDRESS

Stephen O'Harrow
Lyn Pyle
P.O. Box 23404
Honolulu
Hawaii'i 96823

March 6, 2020

TO: Chair Rhoads and members of Judiciary Committee

RE: HB 2738 HD 1 Relating to Campaign Finance

Support for hearing on March 10

Americans for Democratic Action is an organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

We support HB 2738 HD 1 as it would prohibit foreign nationals and foreign corporations from making independent expenditures and would require every corporation that contributes or expends funds in a state election to file a statement of certification regarding its limited foreign influence. With the increased public concern over potential Russian interference in our presidential election, we should protect all our elections from foreign influence. American democracy for Americans not foreign interests.

Thank you for your favorable consideration.

Sincerely,
John Bickel, President





49 South Hotel Street, Room 314 | Honolulu, HI 96813
www.lwv-hawaii.com | 808.531.7448 | voters@lwv-hawaii.com

COMMITTEE ON JUDICIARY
TUESDAY, 3/10/20, 10 am, Room No. 016

HB2738 HD1, RELATING TO CAMPAIGN FINANCE
TESTIMONY

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

Chair Rhoads, Vice-Chair Keohokalole and Committee Members:

The League of Women Voters of Hawaii supports and suggests clarification for HB2738 HD1 which specifies campaign finance reporting changes which support the prohibition against foreign nationals and corporations attempting to influence elections in Hawaii.

We have seen in recent national elections actions by foreign actors to influence the outcome of elections. These actions were not easily attributable to the foreign actors who engaged in them. HB2738 HD1 makes three sensible changes which together provide a stronger defense against foreign interference than current law.

Clarification suggested: Section 3, pp. 5-6, allows a foreign corporation to contribute to “a candidate, candidate committee, or noncandidate committee if no foreign national or foreign corporation participated in the foreign corporation’s election-related activities, including decisions concerning contributions, expenditures, or the administration of a candidate committee or noncandidate committee...”

When I read this, it seems a condition impossible to meet: If a foreign corporation contributes to a candidate, for example, how is it possible that no foreign corporation participated in that foreign corporation’s election-related activities? It reads to me like an oxymoron.

I suggest this section be re-worded for clarity.

HB2738 HD1 is, however, a timely and appropriate response to a new reality which could seriously compromise our democracy.

Thank you for the opportunity to submit testimony.

HB-2738-HD-1

Submitted on: 3/8/2020 11:05:51 AM

Testimony for JDC on 3/10/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Best	Individual	Support	No

Comments:

I support Common Cause Hawaii & urge you to peruse their considered testimony

Mahalo

HB-2738-HD-1

Submitted on: 3/7/2020 10:06:20 AM

Testimony for JDC on 3/10/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Quinn	Individual	Support	No

Comments:

Dear Honorable Committee Members:

Please support HB2738. Campaign financing has been increasingly corrupting our democracy. This bill will help to level the playing field.

Thank you for the opportunity to present my testimony.

Andrea Quinn

Kihej, Maui

HB-2738-HD-1

Submitted on: 3/9/2020 12:41:41 AM

Testimony for JDC on 3/10/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
tlaloc tokuda	Individual	Support	No

Comments:

- I supports HB 2738, HD1's prohibition on foreign national's and foreign corporation's making independent expenditures in Hawaii's elections.

HB-2738-HD-1

Submitted on: 3/9/2020 7:55:58 AM

Testimony for JDC on 3/10/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Teri Heede	Individual	Support	No

Comments:

HB-2738-HD-1

Submitted on: 3/9/2020 8:26:19 AM

Testimony for JDC on 3/10/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Edward B Hanel Jr	Individual	Support	No

Comments:

Concur with CommonCause Hawaii comments.

LATE

HB-2738-HD-1

Submitted on: 3/9/2020 11:26:53 AM

Testimony for JDC on 3/10/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Susan Dursin	Individual	Support	No

Comments:

I strongly support HB2738, which would prohibit foreign nationals from making contributions, donations or expenditures in connection with any state or local election. I believe there is no problem more damaging to our democratic election system than aspects of campaign finance. When large sources of funding underwrite elections, they are bound to gain influence, even with candidates who believe they have the public good at heart.

When foreign nationals -- be they individuals or corporations or governments -- contribute to any campaign for elected office or any campaign related to a ballot issue, they are affecting the public will. Often, the source of donations can be obscure, confounding the efforts even of those who have the desire and the time to follow up on campaign finance information.

We have enough campaign finance problems domestically, without having foreign influence involved through donations.

I am wary of the exceptions provided to the straightforward rule introduced in HB2738, HD1. These exceptions would make monitoring foreign contributions very difficult and provide possible cover for those foreign entities intent on influencing our elections.

Please support the basic prohibitions of this bill and its disclosure requirements for corporations. Voters have more trust in the system and are-- in fact -- more likely to vote when they know the source of money in elections.

Thank you for considering my testimony.

LATE

HB-2738-HD-1

Submitted on: 3/9/2020 1:05:30 PM

Testimony for JDC on 3/10/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
David Anderson	Individual	Support	No

Comments:

Foreign nationals are prohibited from making contributions, donations or expenditures in connection with any election, including state and local elections. 52 U.S.C. § 30121. Additionally, foreign nationals may not donate to noncandidate committees or fund electioneering communications. Id. Foreign nationals are defined as foreign governments, foreign political parties, foreign corporations, foreign associations, foreign partnerships, and individuals with foreign citizenship unless they have “green cards” indicating they have been lawfully admitted for permanent residence. 22 U.S.C. § 611(b).

I support this prohibition on foreign national’s and foreign corporation’s making independent expenditures in Hawaii’s elections.

HB 2738, HD1, however, further provides, on pages 6 and 7, that foreign corporations may make contributions to or an expenditure on behalf of a candidate, candidate committee, or a noncandidate committee, pursuant to certain exceptions. Domestic subsidiaries of foreign corporations may contribute to non-candidate committees only so long as the foreign parent does not finance the non-candidate committee’s activities through the subsidiary and no individual foreign national participates in the operation of the non-candidate committee or makes any decisions regarding its contributions or expenditures. These exceptions to permit domestic subsidiaries of foreign corporations to establish political action committees, see <https://www.fec.gov/updates/foreign-nationals/>, could swallow the rule to prevent foreign corporations from influencing our elections.

I support this bill's disclosure requirements of corporations, which are found on pages 6-7 Section 3 of the bill. These disclosure requirements will assist with transparency in our elections, allow people to know who/what is funding which candidates, and assist with limiting the influence of foreign corporate spending in state elections permitted by the PAC exceptions. Suggest that the same disclosures may be dual filed with both the Chief Election Officer and the Hawaii Campaign Spending Commission (HCSC), as the HCSC has jurisdiction over campaign finance matters.