

# SB96

Measure Title: RELATING TO CORPORATIONS.

Report Title: Corporation Reports; Independent Campaign Expenditures and Political Contributions

Description: Requires domestic and foreign corporations to provide their shareholders with reports of independent expenditures and political contributions.

Companion:

Package: None

Current Referral: CPH, JDC

Introducer(s): K. RHOADS, S. CHANG, English, Keith-Agaran, Moriwaki, Shimabukuro





**Hawaii**

*Holding Power Accountable*

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To: The Senate Committee on Commerce, Consumer Protection,  
and Health  
From: Brodie Lockard, Board Member, Common Cause Hawaii  
Date: Thursday, January 31, 2019, 9:30 am

**In support of SB 96**

Dear CPH Chair Baker, Vice Chair Chang and Committee Members—

Common Cause Hawaii supports SB 96. We also strongly suggest that the threshold of \$10,000 in independent expenditures and contributions in a year triggering an annual report to shareholders be lowered to \$1,000.

Shareholders of every corporation, domestic and foreign, should decide what independent expenditures and political contributions their companies make. Failing this, shareholders should at least be apprised of their corporations' political activities. These people *are the owners of the corporation*, after all.

Given the campaign finance environment following the Supreme Court's 2010 *Citizens United* and 2011 *Western Tradition Partnership, Inc. v. Montana* decisions, this transparency is more important than ever. Corruption and its appearance must be closely monitored in today's loose culture of campaign contributions.

Russian interference in the 2018 U.S. presidential election underscores that upholding Hawaii's ban on campaign contributions by foreign corporations is especially important and timely.

Please pass SB 96 and protect transparency in corporate political activity.

Thank you for the opportunity to testify.

Brodie Lockard  
Board Member, Common Cause Hawaii

Presentation To The  
Committee on Commerce, Consumer Protection and Health  
January 31, 2019 at 9:30 AM  
State Capitol Conference Room 229

### **Testimony in Opposition to Senate Bill 96**

TO: The Honorable Rosalyn H. Baker, Chair, Committee on Commerce, Consumer Protection and Health  
The Honorable Stanley Chang, Vice Chair Committee on Commerce, Consumer Protection and Health  
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 banks with branches in Hawai'i. The HBA opposes SB 96 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.

SB 96 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 prepared by publicly traded companies. 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 unduly onerous.

It is highly likely that corporations doing business in Hawaii are not large corporations but small corporations 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 over 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 as to 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 SB 96 and please let us know if we can provide further information.

Neal K. Okabayashi  
(808) 524-5161

**SB-96**

Submitted on: 1/29/2019 5:36:35 PM

Testimony for CPH on 1/31/2019 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Barbara Polk	Individual	Support	No

Comments:

Chair Baker and Vice Chair Chang--

Thank you for hearing this bill that would provide a creative attempt to rein in corporate involvement in political campaigns by requiring that their share holders be informed of their contributions or expenditures. While I would prefer that the trigger for reporting to share holders be lower, \$5000 or \$1000, I urge you to pass this bill either as is or with a lower trigger.

Aloha,

Barbara Polk