



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


235 SOUTH BERETANIA STREET, ROOM 300  
HONOLULU, HAWAII 96813

February 1, 2021

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   
Campaign Spending Commission

SUBJECT: **Testimony on S.B. No. 399, Relating to Orders of the Campaign Spending Commission**

Tuesday, February 2, 2021  
9:30 a.m., Via Videoconference

Thank you for the opportunity to testify on this bill.<sup>1</sup> The Campaign Spending Commission (“Commission”) supports this bill.

This measure amends HRS §11-410 by (1) amending subsection (b) to provide that a person waives the right to a contested case hearing if the person fails to request a contested case hearing within twenty days of receipt of the Commission’s preliminary determination, and (2) amending subsection (d) to provide that a final order of the Commission may be filed in the First Circuit Court for confirmation as a civil judgment, enforceable and collectible as any other judgment issued in the circuit courts, provided that there shall be no appeal from a judgment issued pursuant to subsection (d).

The final orders that are confirmed as judgments under subsection (d) are only those orders that are rendered final because the respondents have failed to request a contested case hearing pursuant to HRS §11-405(b). These final orders are not appealable to the Circuit Court since the respondents would have failed to exhaust the administrative process and thus no evidentiary record would exist to perfect an appeal. Further, if a final order is confirmed as a judgment under subsection (d), any respondent would have the right to seek collateral relief from the judgment under Rule 60(b)<sup>2</sup>, Hawaii Rules of Civil Procedure. If relief is granted, the Circuit

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

<sup>2</sup> Rule 60 provides for relief from a judgment or order as follows:

Court would most likely refer the case back to the Commission for a contested case hearing, rather than decide the case at that time as an agency appeal because of the lack of an evidentiary record that a contested case hearing would provide.

These amendments were suggested by the deputies in the Civil Recoveries Division of the Department of the Attorney General who are assisting the Commission by enforcing the Commission's orders in the First Circuit Court. The Commission urges this Committee to pass this measure.

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**(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc.**

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Statement Before The  
Tuesday, February 2, 202  
9:30 AM  
Via Videoconference

in consideration of  
**SB 399**

**RELATING TO ORDERS OF THE CAMPAIGN SPENDING COMMISSION.**

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

Common Cause Hawaii supports SB 399 with amendments, which (1) provides that certain rights shall be deemed waived if a preliminary determination of probable cause is rendered during a chapter 92 meeting and the person fails to request a contested case hearing within 20 days of receipt of the preliminary determination and (2) allows the Campaign Spending Commission to have an order confirmed as a judgment by the first circuit court, giving the order the same force and effect as any other judgment issued by the circuit courts, provided that there shall be no appeal from the judgment.

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.

Common Cause Hawaii supports SB 399 providing that a person shall have 20 days to contest the commission's preliminary determination of probable cause by making a request for a contested case hearing under Hawaii Revised Chapter 91. These rights are deemed waived if the order is a preliminary determination of probable cause rendered during a chapter 92 meeting pursuant to section 11-404 and the person fails to request a contested case hearing within 20 days of receipt of the preliminary determination, as provided in HRS § 11-405(b).

Common Cause Hawaii supports SB 399, which permits an order of the commission to be confirmed as a judgment in Circuit Court, giving the order the same force and effect as any other judgment issued by the Circuit Courts. However, Common Cause Hawaii is concerned that the commission's judgment shall not be appealable.

Common Cause Hawaii suggests SB 399 be amended to remove that the commission's orders confirmed as a judgment in the Circuit Courts are not appealable. A person's right to due process and his/her fair day in court is a central part of democracy.

Thank you for the opportunity to testify in support of SB 399, as amended. If you have further questions of me, please contact me at [sma@commoncause.org](mailto:sma@commoncause.org).

Very respectfully yours,

Sandy Ma  
Executive Director, Common Cause Hawaii



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COMMITTEE ON JUDICIARY  
TUESDAY 2/2/21, 9:30 AM, VIDEOCONFERENCE

SB399 RELATING TO ORDERS OF THE CAMPAIGN SPENDING COMMISSION

**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, with amendments, this bill, which waives some rights for a person failing to file a timely request for a contested case hearing following a chapter 92 preliminary determination of probably cause; and allows the Campaign Spending Commission (CSC) to have an order confirmed as a judgement by the First Circuit Court without the possibility of appeal.**

The League of Women Voters of Hawaii believes that both actions recommended in this bill are reasonable; however, we suggest that the 20 day timeline for requesting a contested case hearing be extended to 30 days, to allow for more extenuating circumstances which may prevent earlier filing of such a request.

The League also suggests that to remove the possibility of an appeal of a CSC judgement, while understandable in consideration of the limited resources of the CSC, is a problematic infringement of the right to due process.

Thank you for the opportunity to submit testimony.

**SB-399**

Submitted on: 1/31/2021 9:56:56 PM

Testimony for JDC on 2/2/2021 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Feena Bonoan	Individual	Oppose	No

Comments:

Please do not pass this bill.