



STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

April 1, 2021

TO: The Honorable Mark M. Nakashima, Chair
House Committee on Judiciary & Hawaiian Affairs

The Honorable Scot Z. Matayoshi, Vice Chair
House Committee on Judiciary & Hawaiian Affairs

Members of the House Committee on Judiciary & Hawaiian Affairs

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

SUBJECT: **Testimony on S.B. No. 404, HD 1, Relating to Electioneering Communications**

Tuesday, April 6, 2021
2:00 p.m., Via Videoconference

Thank you for the opportunity to testify on this bill.¹ The Campaign Spending Commission (“Commission”) supports this bill **as originally introduced**.

This measure, as originally introduced on behalf of the Commission, amends Hawaii Revised Statutes (“HRS”) §11-341 to increase the amount of aggregate expenditures from more than \$2,000 to more than \$5,000 before the filing of a statement of information for electioneering communications is required. The bill also amends the definition of “disclosure date” from the first date a person has made expenditures during that year to the first date the electioneering communication is publicly distributed, provided that more than \$5,000 has been spent. In anticipation of the change in the definition of disclosure date, the bill also repealed subsection (e) of the statute which treated a person as having made an expenditure if the person has executed a contract to make the expenditures.²

The bill further amends the definition of “electioneering communication” by deleting “at a bulk rate” from advertisements sent by mail so that all advertisements sent by mail, be it bulk rate or first class, will be covered by the definition. Finally, the bill deletes items “that constitute

¹ The companion bill is H.B. No. 144, HD 2.

² This repeal of subsection (e) is not needed if the new definition of “disclosure date” is not adopted.

expenditures by the expending organization” from the types of communications excluded from the definition of electioneering communication.

The changing of the disclosure date to when the advertisement runs, which triggers the need to file the statement of information, is timelier since contracts for these advertisements could occur weeks or months before the advertisements are publicly distributed. This would also address the concern that having a disclosure date when the contract for the expenditure is made reveals candidates’ campaign strategy to opponents. Also, increasing the threshold amount from \$2,000 to \$5,000 will reduce the burden on smaller candidate committees with less activity. Thus, committees that purchase only inexpensive social media advertisements, and a candidate for a house district who pays for only one district-wide mailer would probably not need to file statements of information. In the 2020 elections, **candidate committees filed 1,298 statements of information and noncandidate committees filed 145 statements of information.**³ If the \$5,000 threshold was in place in the 2020 elections, candidate committees filings of statements of information would have been reduced by about 25% and noncandidate committees filings of statement of information would have been reduced by 11%. **Obviously, to completely exempt candidate committees from the requirement to file statements of information, which the House has done to this bill’s companion, H.B. 144, HD 2, would be a tremendous blow to transparency in political spending and the Commission strenuously advises this Committee to not make the same amendment to this bill.**

Finally, it makes no sense to consider advertisements mailed by bulk rate only, and not by any other postal rate, to be electioneering communications. Also, some committees have used the exclusion of items “that constitute expenditures by the expending organization” from the definition of electioneering communication, as a reason why those committees did not have to file statements of information. However, all committees are required to file statements of information for electioneering communications. HRS §§11-341(b)(2), 11-341(b)(3), & 11-341(b)(6). This exclusion is not needed since it cannot apply to committees already registered with the Commission and since the spending threshold for electioneering communications is more than \$1,000, any person filing a statement of information for electioneering communication will have to register with the Commission.

The House GVR, in HD 1, blanked out the threshold amount that would trigger the need to file a statement of information. Page 1, line 6; Page4, line12. GVR also rejected the repeal of items “that constitute expenditures by the expending organization” from the types of communications excluded from the definition of electioneering communication. Page 5, Lines 11-12. **The Commission asks this Committee to restore the language originally contained in S.B. 404 that was passed by the Senate.**⁴

³ These numbers do not include the amended statements of information that were filed.

⁴ The Commission would not object to the adoption of a threshold amount of (more than) \$3,000 as recommended by Common Cause in its testimony to GVR.

Statement Before The
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
Tuesday, April 6, 2021
2:00 PM
Via Videoconference, Conference Room 325

in consideration of
SB 404, HD1
RELATING TO ELECTIONEERING COMMUNICATIONS.

Chair NAKASHIMA, Vice Chair MATAYOSHI, and Members of the Judiciary & Hawaiian Affair Committee

Common Cause Hawaii supports with suggested amendments SB 404, HD1, which (1) changes the monetary threshold that triggers disclosure of electioneering communications to an unspecified amount, (2) requires that disclosures of electioneering communications occur on the date the electioneering communications are publicly distributed, (3) classifies election advertisements sent by mail at any postal rate as electioneering communications, (4) exempts election advertisements that are actual expenditures of an organization from being considered electioneering communications, and (5) repeals the requirement that a person be treated as having made an expenditure if the person has executed a contract to make the expenditure.

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.

SB 404, HD1 provides, at page 1, lines 4-9, that each person who makes an expenditure for electioneering communications in an aggregate amount of more than a blank amount (originally in Hawaii Revised Statutes (HRS) § 11-341(a) the amount is \$2,000) during any calendar year shall file with the commission a statement of information within twenty-four hours of each disclosure date. Common Cause Hawaii suggests that the amount be raised from \$2,000 to \$3,000 to trigger electioneering communication disclosure to ensure that smaller, local races will also be subject to HRS § 11-341. This will permit continued transparency and accountability in smaller county council races.

SB 404, HD1 also amends the definition of “disclosure date” at page 4, lines 8-9 to the “date on which subsequent electioneering communication is publicly distributed” versus the original definition of “has made expenditures” on page 4, line 3. Common Cause Hawaii is concerned with definitional change to “disclosure date”. This is because an electioneering communication may be contracted / purchased and then subsequently and serially distributed at a later time. If the disclosure date did not include dates on which a contract is executed, i.e., “has made expenditures”, a person could conceivably make their contracts for electioneering communications payable after the election and wait to disclose that spending, depriving the public of that information until it’s too late. Additionally, changing to “publicly distributed” could make administration more difficult and possibly lead to less timely disclosure in the last few weeks or days leading up to an election. Everyone who had previously been reporting their contracts for electioneering communications well ahead of the election, when their contracts were executed, would now be reporting all of those in together in that short period right before the election.

Transparency is better served if an electioneering communication statement of information is timely filed when contracted versus distributed. Common Cause Hawaii suggests keeping the original definition of “disclosure date”.

Common Cause Hawaii stresses the need for candidates and candidate committees to be subject to the electioneering communications disclosure requirements for public transparency and accountability. The general public deserves to know who is making an appeal to vote for or against a specific candidate.

Thank you for the opportunity to testify in support of SB 404, HD1 with suggested amendments. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii





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COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
TUESDAY, 4/6/21, 2 PM, VIDEOCONFERENCE

SB404 HD1 RELATING TO ELECTIONEERING COMMUNICATIONS
Beppie Shapiro, Legislative Committee, League of Women Voters of Hawaii

Chair NAKASHIMA, Vice-Chair MATAYOSHI and Committee Members:

The League of Women Voters of Hawaii supports the original intent of this bill, which modifies requirements for filing statements of information for electioneering communications.

The League of Women Voters is a grass-roots, non-partisan, activist organization which believes that the methods of financing political campaigns should provide voters sufficient information about candidates and campaign issues to make informed choices, and ensure transparency and the public's right to know who is using money to influence elections.

SB404 HD1 leaves blank the amount of money spent on an electioneering communication required to trigger reporting. The League believes that while the existing trigger amount is too low given current costs, the amount should be specified in this bill. Returning to the originally specified amount, \$5000, may be too high to require any reporting from smaller campaigns, e.g. for county offices on Neighbor Islands. This might prevent voters from comparing funders of competing campaigns. We suggest amending HD1 to specify an amount of \$3000 or at most \$4000.

We do not take a position on whether the date of expenditure, or the date of publication of an electioneering communication should trigger reporting. We find valid reasons for either date.

We do believe it's important for all committees, both candidate and non-candidate, to file reports on their electioneering communication spending. This information provides the public a valuable way to evaluate to what extent the candidate is supported by, and hence possibly influenced by,



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individuals and organizations with known priorities which may or may not align with a voter's priorities. Thus we strongly encourage this Committee not to exempt candidate committees from providing this information.

Thank you for the opportunity to submit testimony.

SB-404-HD-1

Submitted on: 4/5/2021 1:53:22 PM

Testimony for JHA on 4/6/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Polk	Individual	Comments	No

Comments:

These rules were established to be sure that the public could know who was publishing a political ad before an election. The current bill is overly broad, allowing candidate and non-candidate committees and individuals to publish an ad within 30 days of an election without providing the required information until afterward, and perhaps even after the election is over. Please amend this bill to require the advance information about any electioneering communication that will be published within 30 days of an election. This is especially important now, when many people cast their vote well before election day.