



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:

H.B. NO. 1119, H.D. 1, RELATING TO CHARITABLE ORGANIZATIONS.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Tuesday, February 23, 2021 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 308, Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact Janine R. Udui,
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Chair Luke and Members of the Committee:

The Department of the Attorney General (Department) offers the following comments on the bill.

H.B. No. 1119, H.D. 1, seeks to address concerns that organizations recognized by the Internal Revenue Service ("IRS") for tax-exempt status under section 501(c)(4) of the Internal Revenue Code ("501(c)(4) organizations") may spend an unregulated amount of funds to influence elections and engage in excessive political activities without consequences or oversight. See section 1, page 1, lines 7-9, and page 2, lines 17-20. Of specific concern is that 501(c)(4) organizations are not currently required to disclose information about their donors. Id. at page 1, lines 1-7. The bill purports to "promote transparency by tax exempt social welfare organizations by subjecting 501(c)(4) organizations to the same requirements of other charitable organizations regulated by the department of the attorney general." Section 1, page 3, lines 9-13. To accomplish this purpose, the bill proposes to amend the definition of "charitable organization" in section 467B-1, Hawaii Revised Statutes (HRS), to expressly include 501(c)(4) organizations. See section 2, page 3, lines 14-21.

The Department has concerns regarding this amendment because it will not accomplish the bill's purpose of subjecting 501(c)(4) organizations to State oversight with respect to their political activities to ensure compliance with its tax-exempt status and promote transparency of donor information.

The IRS has the sole authority to recognize federal tax-exempt status, and to revoke an organization's federal tax-exempt status if it finds an organization's activities are inconsistent with federal tax law. Conversely, chapter 467B, HRS, entitled "Solicitation of Funds from the Public," authorizes the Department of the Attorney General to oversee and regulate charitable fundraising activities in the State. The chapter's definition of a "charitable organization" falling under the Department's oversight authority is very broad and already covers 501(c)(4) organizations. Specifically, the definition includes anyone holding itself out to be established for any "social welfare or advocacy" purpose, which is precisely what a 501(c)(4) organization is. Accordingly, 501(c)(4) organizations are already subject to the requirements of chapter 467B with respect to the solicitation of funds from the public. Amending the definition of "charitable organization" to include 501(c)(4) organizations as proposed in this bill will not address the bill's concerns to prevent a 501(c)(4) organization's participation in political activities in violation of its tax-exempt status. That is a matter for the IRS.

Similarly, the amendment will not further transparency into purported influencers of the election process by requiring the disclosure of the organization's donors or the amount of the donor's contribution. Pursuant to section 467B-6.5(a), HRS, charitable organizations registered to solicit donations in the State are only required to provide to the State the same Form 990 and Schedule B (Schedule of Contributors) they have filed with the IRS. The IRS issued final regulations, effective on May 28, 2020, that certain organizations, including 501(c)(4) organizations, do not need to disclose the donor information to the IRS with the Form 990 returns. See 85 Fed. Reg. 31959 (May 28, 2020). Because 501(c)(4) organizations are not required to submit the Form 990 Schedule B list of contributors to the IRS, 501(c)(4) organizations that are registered to conduct charitable solicitations in the State are not required to submit the Form 990 Schedule B list of contributors to the Department as part of the annual filing requirement under chapter 467B.

For the foregoing reasons, we do not believe the bill's proposed amendment to Hawaii's charitable solicitation laws will achieve its intended purpose of promoting transparency of 501(c)(4) organizations with respect to their political activities and influence on local political campaigns and elections.

Conversely, H.B. No. 1118, H.D. 1, entitled "Relating to Campaign Spending," which is also intended to address the influence of "dark money" contributions on elections, requires a noncandidate committee that has received funds from a 501(c)(4) organization for advertisements or electioneering communications, to disclose the identity of the donors whose money was used by the organization for the advertisement or electioneering communication. As such, H.B. 1118, H.D. 1, may be the more appropriate measure to address concerns regarding the potential influence of "dark money" on elections. The Department will provide its comments to H.B. No. 1118, H.D.1, by separate testimony.

Thank you for the opportunity to comment.