

Hawaii
Holding Power Accountable

Statement Before The
SENATE COMMITTEE ON JUDICIARY
Tuesday, March 15, 2022
9:30 AM
Via Conference Room 016 & Videoconference

in consideration of
HB 1426, HD1

RELATING TO ORDERS OF THE CAMPAIGN SPENDING COMMISSION.

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

Common Cause Hawaii supports with amendments HB 1426, HD1, which provides (1) 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 campaign spending commission's preliminary determination and (2) allows the campaign spending commission to have an order confirmed as a civil judgment, enforceable and collectible as any other judgment issued in the circuit courts.

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 people by requiring strong disclosures and making sure everyone plays by the same commonsense rules.

Common Cause Hawaii supports HB 1426, HD1, 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).

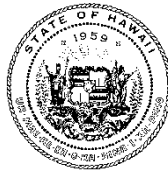
Common Cause Hawaii supports HB 1426, HD1, which permits an order of the commission to be confirmed as a judgment in Circuit Court, giving the order the same force and effect as any other judgment issued by the Circuit Courts. However, Common Cause Hawaii is concerned that the commission's judgment shall not be appealable.

Common Cause Hawaii suggests HB 1426, HD1 be amended to remove that the commission's orders confirmed as a judgment in the Circuit Courts are not appealable and/or person may seek collateral relief. A person's right to due process and his/her fair day in court is a central part of our democracy.

Thank you for the opportunity to testify in support of HB 1426, HD1, as amended. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii



STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION


235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

March 14, 2022

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

The Honorable Jarrett Keohokalole, Vice Chair
House Committee on Judiciary

Members of the House Committee on Judiciary

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

SUBJECT: **Testimony on H.B. No. 1426, HD 1, Relating to Orders of the Campaign Spending Commission**

Tuesday, March 15, 2022
9:30 a.m., Conference Room 016 & Videoconference

Thank you for the opportunity to testify on this bill.¹ 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)², Hawaii Rules of Civil Procedure. If relief is granted, the Circuit

¹ The companion bill is S.B. No. 2041.

² 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. There have been up to fifteen candidates referred to that office for enforcement of Commission orders who have repeatedly violated campaign finance law by not filing reports thereby compounding the violations (<http://ags.hawaii.gov/campaign/cc/notice/>). As the law now stands, there is no option to collect fines as a money judgment. The Attorney General's Office has been forced to seek bench warrants with bail up to \$500 to compel payment of fines and the filing of reports; meanwhile, the Commission carries these candidates as they repeatedly violate campaign finance law by not filing subsequent reports. The Commission urges this Committee to amend Section 3 to make this measure effective upon approval and pass this measure.

(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.

TO: Members of the Committee on Judiciary

FROM: Natalie Iwasa
808-395-3233

HEARING: 9:30 a.m. Tuesday, March 15, 2022

SUBJECT: HB 1426, CD1 Waiver of Rights, Campaign Spending Commission -
OPPOSED

Aloha Chair Rhoads and Committee Members,

Thank you for allowing me the opportunity to provide testimony on HB 1426, which would deem certain rights waived if a request for a hearing is not made within 20 days of receipt of the Campaign Spending Commission's preliminary determination. The bill would also allow the commission to file certain orders with the court.

It doesn't seem fair to waive rights of a person to a hearing, especially with a short 20-day window. As we've seen with the pandemic, it's not unusual for someone to be stuck off island and not have access to mail for periods exceeding 20 or even 30 days.

Please vote "**No**" on this bill.