

**STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION**

235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

February 22, 2022

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
Campaign Spending Commission KEI

SUBJECT: **Testimony on H.B. No. 2416, HD 1, Relating to Campaign Spending**

Thursday, February 24, 2022
2:00 p.m., Via Videoconference

Thank you for the opportunity to testify on this bill. The Campaign Spending Commission (“Commission”) appreciates the intent of this important disclosure bill. The Commission believes that transparency in political spending is a primary goal of campaign spending laws. The Commission provides the following comments.

The purpose of the measure is to require tax-exempt organizations under IRC section 501(c)(4) to disclose donors of more than \$100 if the organizations make expenditures in state or local elections. In the past, the Commission did not believe that the state could require the disclosure of donors to IRC section 501(c)(4) organizations because the Internal Revenue Service did not require the disclosure of donors. The Commission’s testimony to GVR and JHA last session on H.B. No. 1118, reflected this position. More recently, the appellate court in Gaspee Project v. Mederos, 13 F.4th 79 (1st Cir. 2021), held that Rhode Island could require the disclosure of donors under some circumstances. The Commission now believes Hawaii can require the disclosure of donors. The Commission participated in the drafting of this measure. However, the Commission has a few concerns about the measure in its present form.

The measure requires the disclosure of donors who donate more than \$100 to the nonprofit organization.¹ *See, e.g.*, page 11, lines 7-9. The Commission believes this threshold

¹ The Commission assumes the nonprofit organization reporting donors is a noncandidate committee required to register with the Commission pursuant to HRS §11-321(g).

spending amount for the disclosure of donors may be too low. In Gaspee, the court approved of the disclosure of “donors of over \$1,000.” Gaspee at 88-89. Under Chapter 11, Hawaii Revised Statutes (“HRS”), candidates and noncandidate committees must disclose contributors who give in the aggregate more than \$100 during an election period. HRS §§11-333(b)(1), 11-335(b)(1). By definition a “contribution” has the purpose of influencing the nomination or election of a person to office or influencing the outcome of any ballot issue. HRS §11-302. The new definition of “donation” proposed by the measure does not contain that direct nexus to campaign spending. Although it is safe to assume that contributors know their contributions will be used for making expenditures, it is not true for donors to nonprofit organizations. Thus, the Commission believes that the state cannot set the threshold spending limit for the disclosure of donations at the same amount for the disclosure of contributions. The threshold should be higher, as it was in the Gaspee Project case (over \$1,000).

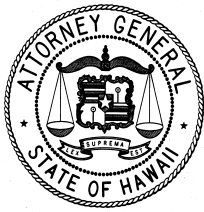
Section 5 of the measure pertains to electioneering communications. Paragraphs (6) and (7), on pages 16-17, **should not be repealed or amended at all**. If a person contributed to a noncandidate committee or other organization for the purpose of publishing or broadcasting the electioneering communications, then that person should be identified in the statement of information. The new donor information should be in a new paragraph (8) and should read:

“(8) If the expenditures were made by a nonprofit organization, the amount and date of deposit of each donation received and the name and address of each donor making a donation aggregating more than \$100² during an election period, which was not previously reported pursuant to section 11-335; provided that a statement filled pursuant to this section shall not include a donor if: (A) . . . (B) . . .”

What is now paragraph (8) will be paragraph (9) and what is now paragraph (9) will be paragraph (10). If these changes are made, then the definition of “last in, first out” is not needed and can be deleted from the measure. Also, the use of “top three contributors” would not be needed. The use of the term here conflicts with the definition of “top contributor” in HRS §11-393 and is thus confusing since HRS §11-341(b), which Section 5 of this bill is amending, already refers to HRS §11-393 in what is now paragraph (9).

Finally, the Commission notes that the amendment made to “disclosure date” on page 18, lines 12-16, is not consistent with the Commission’s attempt to restore the threshold amount for filing a statement of information from “more than \$1,000” to “more than \$2,000,” and to require the filing of an additional statement of information on the date of any subsequent public distribution of electioneering communications during the calendar year. See, Section 2 of H.B. No. 1888, H.D. 2.

² As noted above, the Commission believes that the threshold for the reporting of a donation (over \$100) is too low.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:

H.B. NO. 2416, H.D. 1, RELATING TO CAMPAIGN SPENDING.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Thursday, February 24, 2022 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325, Via Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General, or
Candace J. Park, Deputy Attorney General

Chair Nakashima and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purpose of this bill is to inform the electorate of the true source of dark money campaign spending. However, we recommend the bill be narrowly tailored to achieve the intended purpose and to protect the privacy of individuals who unknowingly may be affected. This can be accomplished by adding a new section to chapter 11, part XIII, Hawaii Revised Statutes (HRS), as follows:

"§11- Donors; consent; notice. (a) Nonprofit organizations may use a donation for electioneering communications, independent expenditures, or contributions only upon receipt of a written consent from the donor to use the donation for electioneering communications, independent expenditures, or contributions.

(b) Nonprofit organizations subject to this chapter shall provide written notice to donors that the donor's name and address may be reported pursuant to this chapter in a public document if the donor provides written consent to use the donation for electioneering communications, independent expenditures, or contributions.

(c) If the donor fails to provide written consent that the donation may be used for electioneering communications, independent expenditures, or contributions, the nonprofit organization shall, within thirty days of receipt of the donation, transmit to the donor a written confirmation by the nonprofit organization's highest ranking official that the donation will not be used for electioneering communications, independent expenditures, or contributions; and the name and address of the donor will not be reported by the nonprofit organization pursuant to this chapter."

If the Committee passes the bill with this recommended amendment, section 11-335(b)(8) HRS, amended in section 3 of the bill, on page 11, lines 10-21, should be amended to read:

"provided that a schedule filed pursuant to this section shall not include a donor if the donor has not provided consent pursuant to section 11-_____."

Also, section 11-338(b)(7), HRS, amended in section 4 of the bill, on page 14, lines 14-15, should be similarly amended; and section 11-341(b)(7), HRS, as amended regarding the contents of statements of information in section 5 of the bill, on page 17, lines 9-21, should be similarly amended.

In addition, section 5 of this bill pertains to section 11-341, HRS, which requires that a person making an electioneering communication in an aggregate of more than \$1,000 during a calendar year, file a statement of information within twenty-four hours of the disclosure date of the electioneering communication. This bill amends paragraph (6) of section 11-341(b), HRS, on page 16, lines 18-21, to require that the statement of information contain "the names and addresses of the top three contributors contributing an aggregate of more than \$100 using the last in, first out accounting method from the disclosure date." This bill also amends paragraph (7) of section 11-341(b), HRS, on page 17, lines 6-8, to require that the statement of information contain "the names and addresses of the top three donors donating an aggregate of more than \$100 using the last in, first out accounting method from the disclosure date."

We recommend that paragraph (6) in section 5, on page 16, lines 15-21, be amended to read as follows:

"(6) The names and addresses of the top three contributors contributing an aggregate of more than \$100 in the preceding twelve-month period;"

Likewise, we recommend that paragraph (7) in section 5, on page 17, lines 5-8, be amended as follows:

"(7) The names and addresses of the top three donors donating an aggregate of more than \$100 in the preceding twelve-month period;"

If the Committee amends paragraphs (6) and (7) as recommended, the addition of the definition of "last in, first out" is unnecessary. Accordingly, section 2 can be amended by deleting the definition of "last in, first out" on page 6, lines 7-10.

Paragraph (6) in section 5, quoted above, refers to "the top three contributors contributing an aggregate of more than \$100." Section 11-393(e), HRS, provides "For purposes of this part, "top contributor" means a contributor who has contributed an aggregate amount of \$10,000 or more to a noncandidate committee within a twelve-month period prior to the purchase of an advertisement."

We suggest amending section 11-393(e), HRS, as follows:

"For purposes of this [part.] section, "top contributor" means a contributor who has contributed an aggregate amount of \$10,000 or more to a noncandidate committee within a twelve-month period prior to the purchase of an advertisement."

We also suggest amending the definition of "disclosure date" in section 11-341(d), HRS, as amended in section 5(1) of the bill on page 18, lines 12-16. Otherwise, any person subject to section 11-341, HRS, as amended by this bill, including nonprofit organizations, will only be required to file one statement of information upon spending an aggregate of more than \$1,000 on electioneering communications, irrespective of how much the person, including a nonprofit organization, spends beyond the threshold of more than \$1,000. This can be addressed by amending the definition of "disclosure date" as follows:

""Disclosure date" means, for every calendar year, the first date electioneering communications of an aggregate of more than \$1,000 is publicly distributed and the date on which any subsequent electioneering communication is publicly distributed."

Thank you for the opportunity to provide comments.

Statement Before The
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Thursday, February 24, 2022

2:00 PM

Via Video Conference and Conference Room 325

in consideration of
HB 2416, HD1**RELATING TO CAMPAIGN SPENDING.**

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

Common Cause Hawaii provides comments on HB 2416, HD1, which (1) informs the public of the true sources of dark money contributions by requiring section 501(c)(4) nonprofit organizations to disclose the name and address of donors who donate an aggregate of more than \$100, with certain exceptions and (2) adds definitions.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening our representative 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 understands that the State has an important governmental interest in having an informed electorate who knows who is spending in our elections to try to influence our votes. Campaign finance disclosures are critical to serving this important governmental and public interest.

Common Cause Hawaii is a major proponent of robust campaign finance disclosure laws, such as SB3164, SD1. However, Common Cause Hawaii is concerned by HB 2416, HD1, as it only seeks disclosures of nonprofits organizations defined as 501(c)(4), at page 6, at lines 11-13, and that must also register as noncandidate committees.

It is unclear why only (c)(4)s are covered by HB 2416, HD1. Chambers of commerce, unions, etc. are nonprofits. Limited liability organizations and other business entities should also be subject to reporting requirements as they donate to candidate and noncandidate committees -- PACs and SuperPACs -- and form such entities, spending in elections to influence our votes. This legislature should be using its resources to ensure that everyone is not improperly using funds to influence the political process. This legislature should not only be targeting a particular group, thereby allowing others to have special, preferential treatment, leading to more corruption.

Thank you for the opportunity to provide comments on HB 2416, HD1. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma

Executive Director, Common Cause Hawaii



SIERRA CLUB

HAWAII CHAPTER

HOUSE COMMITTEE ON GOVERNMENT REFORM

February 24, 2022 2:00 PM Videoconference

In Opposition to HB2416 HD1, Relating to Campaign Spending

Aloha Chair Nakashima, Vice Chair Matayoshi, and Members of the Judiciary & Hawaiian Affairs Committee,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i respectfully **opposes** HB2416 HD1, Relating to Campaign Spending.

We appreciate efforts that seek to limit the undue influence of money in politics. **However, this particular bill may have a chilling effect on individuals' participation in political and democratic processes.** Political science research shows that disclosure of small donations may impact individuals' participation and donation levels;¹ such an impact may be especially heightened in Hawai'i, where individual privacy is particularly valued. Accordingly, a measure such as this may discourage those who are unable to testify on measures or vet dozens of candidates for office due to work or other obligations, from participating in such legislative and electoral processes through their support of organizations like the Sierra Club.

Moreover, this measure may lead to harassment and intimidation of individuals based on their organizational affiliations. For example, California adopted a law, similar to this measure, that required public disclosure of political donations of more than \$100. Those who subsequently donated to stop a ballot initiative aimed at prohibiting the marriage of same sex couples found their home addresses, employers, and contribution amounts posted on Google Maps. Donors in favor of marriage equality had their employers targeted, their businesses boycotted, and even received death threats.² Notably, on July 1, 2021, the United States Supreme Court ruled that this California law was unconstitutional.

Again, we do support meaningful efforts to limit the undue influence of money in politics, but feel that the targeting of small donors, as proposed in HB2416 HD1, will inadvertently result in limiting political participation and even lead to donor harassment. Accordingly, we respectfully urge you to **HOLD** this measure.

¹ Ray La Raja, *Campaign finance laws that make small donations public may lead to fewer people contributing and to smaller donations*, LONDON SCHOOL OF ECONOMICS, January 7, 2015, available at <https://blogs.lse.ac.uk/usappblog/2015/01/07/campaign-finance-laws-that-make-small-donations-public-may-lead-to-fewer-people-contributing-and-to-smaller-donations/>.

² Brad Stone, *Prop 8 Web Site Shows Disclosure Law is 2-Edged Sword*, NEW YORK TIMES, February 7, 2009, available at <https://www.nytimes.com/2009/02/08/business/08stream.html>.