



**STATE OF HAWAII
OFFICE OF ELECTIONS**

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SCOTT T. NAGO
CHIEF ELECTION OFFICER

TESTIMONY OF THE
CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS
TO THE HOUSE COMMITTEE ON GOVERNMENT REFORM
ON SENATE BILL NO. 2210, SD 2
RELATING TO ELECTIONS

March 16, 2022

Chair McKelvey and members of the House Committee on Government Reform, thank you for the opportunity to provide comments on Senate Bill No. 2210, SD 2. This bill requires the Chief Election Officer, with assistance from the county clerks for elections that involve county offices and countywide ballot issues, to publish and distribute a voters' pamphlet.

We believe an informed electorate is important for the health of our democracy, however, our office must remain apolitical. To produce a voters' pamphlet, we would ask candidates to submit photo and, in their own words, a 150-word statement for inclusion in a voter information guide when they file their nomination paper. At the close of candidate filing, we would translate the statements into the languages covered by the federal Voting Rights Act – Chinese, Ilocano, and Tagalog. We would like to note that the printing of the voter information guide requires a minimum of four weeks. Therefore, we propose making available a digital version of the voter information guide on the Office of Elections' website 45 days before each election to coincide with ballots sent to uniformed and overseas voters. However, we may not be able to send a printed copy within this timeframe.

The table below represents our estimate to provide an English language version and a dual language version in English and each of the covered languages – Chinese, Ilocano, and Tagalog, to send to targeted voters, libraries, voter service centers, and have available online. Additionally, we propose amending the bill to publish three ads in the newspapers on multiple dates reminding voters that the pamphlet has been mailed to them and where it is available, rather than publishing the full voters' pamphlet once.

For mailing, the current estimate of active registered voters is 783,000. We would note that costs would also decrease if this bill was amended to send the voters' pamphlet to households. The U.S. Census Bureau states that between 2015-2019, there were 459,424 households statewide.

For a primary election, we approximate 95 pages accounting for 320 candidates and voter information. For a general election, we estimate the pamphlet would be 86 pages.

	Primary	General	Total
Printing	\$614,295.75	\$614,295.75	\$1,228,591.50
Translation	\$39,690.00	\$14,580.00	\$54,270.00
Mailing	\$533,264.54	\$533,264.54	\$1,066,529.08
Publishing	\$40,000.00	\$40,000.00	\$80,000.00
Accessibility	\$13,780.00	\$13,780.00	\$27,560.00
Total	\$1,601,030.29	\$1,215,920.29	\$2,456,950.58

We would also like to note our support that this measure take effect for the 2024 Elections, as we are already conducting candidate filing and preparing for the 2022 Elections.

Thank you for the opportunity to provide comments on Senate Bill No. 2210, SD 2.



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2210, S.D. 2, RELATING TO ELECTIONS.

BEFORE THE:

HOUSE COMMITTEE ON GOVERNMENT REFORM

DATE: Wednesday, March 16, 2022 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 309, Via Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General,
Reese Nakamura, Deputy Attorney General, or
Patricia Ohara, Deputy Attorney General

Chair McKelvey and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments.

The purpose of the bill is to assist registered voters in making informed decisions when casting their ballots by: (1) requiring the Chief Election Officer to publish and distribute to registered voters a pamphlet for each election; and (2) appropriating funds to allow the Chief Election Officer to publish and distribute a voters' pamphlet for each election.

While we appreciate the intent of this bill, we have concerns that the bill may create confusion in the implementation of its provisions. For example, the proposed new section 11-G at page 8, line 14, through page 10, line 11, requires that if the Chief Elections Officer determines that proposed candidate submissions for the voters' pamphlet contain obscene or otherwise legally prohibited material, or if a candidate believes that false or defamatory information may be included in the voters' pamphlet, either may petition the circuit court for a judicial determination. However, section 11-H continues that if a petition is filed by the Chief Elections Officer, the court is prohibited from issuing an order unless it determines the statement is obscene or otherwise legally prohibited by law for distribution, and if a petition is filed by a candidate, the court is prohibited from issuing an order unless it determines the statement is false or the petitioner has a very substantial likelihood of prevailing in a defamation action. See

page 9, lines 2-4 and page 9, lines 9-12. This could be construed to mean that the court cannot issue any order if the statement is legally permissible. The lack of an order would create ambiguity and prolong the dispute because the parties and the Chief Elections Officer would be unable to take further action without a determination from the court in the form of a court order.

Section 11-G(b), at page 9, lines 15-19, highlights some of the possible confusion: "The State and counties shall not be liable for damages resulting from the publication of the argument, rebuttal, or candidate statement unless the chief election officer or county clerks publish the statement in violation of the order entered under this subsection." This wording appears to require that the court issue an order. If an order does not issue, the Chief Elections Officer will not know whether to publish certain material and may deprive a candidate who prevailed in court from having truthful information published. The delay that may be caused by waiting for an order that may never be issued would also compromise the timely issuance of a voters' pamphlet.

The Department therefore respectfully recommends that section 11-G be amended to clarify the procedure to address disputes or issues regarding potentially obscene, or otherwise illegal, or defamatory material in candidate arguments or statements. A possible solution to address this concern would be to amend the last sentence of section 11-G(a), at page 9, lines 2-4, and the second sentence of section 11-G(b), at page 9, lines 9-12, as follows:

"The court shall not enter an order granting the petition unless it concludes that the matter is obscene or otherwise prohibited for distribution."

"The court shall not enter an order granting the petition unless it concludes that the statement is false or the petitioner has a very substantial likelihood of prevailing in a defamation action."

Thank you for the opportunity to provide these comments.

Statement Before The
HOUSE COMMITTEE ON GOVERNMENT REFORM
Wednesday, March 16, 2022
9:00 AM
Via Videoconference and Conference Room 309
in consideration of

SB 2210, SD2
RELATING TO ELECTIONS.

Chair McKELVEY, Vice Chair WILDBERGER, and Members of the House Government Reform Committee

Common Cause Hawaii supports SB 2210, SD2, which requires the Chief Election Officer, with assistance from the county clerks for elections that involve county offices and countywide ballot issues, to publish and distribute a voters' pamphlet.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to upholding the core values of our representative democracy through efforts that increase civic engagement, voter turnout, and voter participation in our democratic processes.

A voter information guide would create a more informed voting public and hopefully increase voter participation in our elections. A significant number of states have official voter guides published by the state secretary of state, which is equivalent to our State Office of Elections. See https://ballotpedia.org/Features_of_official_voter_guides,_compared_by_state#Comparison_of_voter_guides (retrieved Jan. 28, 2022); see also <https://www.ncsl.org/research/elections-and-campaigns/fiscal-impact-statements.aspx> (retrieved Jan. 28, 2022).

Common Cause Hawaii understands that SB 2210, SD2, at page 8, lines 1-13, provides that candidates are to submit their own statements for placement in a voter information guide. We suggest that candidates be required to pay for its placement in the guide. California and Alaska's voter information guides operate in in this manner. See <https://vig.cdn.sos.ca.gov/2021/pdf/complete-vig.pdf> (retrieved Feb. 19, 2022) and https://www.elections.alaska.gov/election/2020/General/OEPBooks/2020%20AK%20Region%20I%20pamphlet_FINAL-web.pdf (retrieved Feb. 19, 2022).

Common Cause Hawaii further understands that for voter information guides to be trusted and useful to the public, they must:

- Be neutral and written in plain language.
- Be readily available to the public. They should not be disseminated by one means only, such as via electronic means, mail, or in the newspaper. As the current pandemic has revealed, many people do not have access to broadband and/or reliable mail delivery. Voter information guides must be made available at banks, grocery stores, community centers, public libraries, government buildings, and other locations where people are likely to gather.
- Be translated into different languages for all of Hawaii's citizens to be able to access. Hawaii is the most diverse state in the nation with a diversity index of 76% according to the 2020 U.S. Census. The April

2016 DBEDT Research and Economic Analysis Division report on Non-English Speaking Population in Hawaii indicates that Non-English speakers at home in Hawaii increased by 44% from 1980 to 2014. See https://files.hawaii.gov/dbedt/economic/data_reports/Non_English_Speaking_Population_in_Hawaii_April_2016.pdf at Executive Summary pg. i (retrieved Jan. 28, 2022). Ilocano, Tagalog, and Japanese were the top three most common non-English languages spoken at home in Hawaii. *Id.*

- Be accessible to all our various disability communities.

Common Cause Hawaii supports SB 2210, SD2 in creating voter information guides for a more informed and engaged public for the betterment of our representative democracy.

Thank you for the opportunity to testify in support of SB 2210, SD2. If you have any questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii



SB-2210-SD-2

Submitted on: 3/15/2022 8:02:27 AM

Testimony for GVR on 3/16/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Rosemarie Muller	Individual	Support	Written Testimony Only

Comments:

My name is Rosemarie Muller and I live in Keaau, Hawaii. I strongly support this measure.

Thank you