



STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

February 16, 2021

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 S.B. No. 278, Relating to Political Advertising.**

Friday, February 19, 2021
9:30 a.m., Via Video Conference

Thank you for the opportunity to testify on this bill.¹ The Campaign Spending Commission (“Commission”) offers the following comments on this bill.

This bill prohibits electronic advertising that targets a group of individuals on the basis of, (1) online behavioral data, (2) demographic characteristics shared by members of the group, or (3) geographic location at a level smaller than an electoral district. A complete ban on microtargeted political advertisements may have First Amendment implications such that the government must show a basis, at some level of judicial scrutiny, for the ban.² The Commission believes that it is necessary for the Legislature to include a purpose clause detailing why the ban is necessary.

Another concern is the Commission’s ability to effectively regulate microtargeted political advertisements. What would lead the Commission to suspect that an advertisement was impermissibly microtargeted towards a group of persons? For example, a candidate may be targeting an advertisement to a portion of the candidate’s electoral district because of costs and not because of online behavioral data or demographic characteristics of a group. Or will targeting for cost savings be also prohibited because of subsection (a)(3)? If that is the effect of

¹ The companion bill is H.B. No. 660.

² The Commission, of course, defers to the Attorney General on matters concerning the constitutionality of statutes.

subsection (a)(3), can the subsection be enforced? The Commission believes that more information is needed before legislating in this area.

Statement Before The
SENATE COMMITTEE ON JUDICIARY

Friday, February 19, 2021

9:30 AM

Via Videoconference

in consideration of

SB 278**RELATING TO POLITICAL ADVERTISING.**

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

Common Cause Hawaii provides written comments on SB 278, which prohibits the microtargeting of political advertisements on television and social media based on online behavioral data, demographic characteristics, and geographic location below the electoral district level.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening democracy through accountability and transparency reforms.

“Microtargeting typically refers to the act of displaying ads to a narrow audience based on certain characteristics, interests and even ZIP codes.” See <https://www.cnbc.com/2020/05/26/democratic-bills-crack-down-on-political-ad-microtargeting-online.html>; see also https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/voting-in-2020/political-advertising-on-social-media-platforms/.

SB 278’s microtargeting prohibition based on geographic location seems to unduly harm smaller, local county races. It would seem to require grassroots campaigns to advertise in a larger geographic area than perhaps necessary, which may increase campaign costs.

Thank you for the opportunity to provide comments on SB 278. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii



February 19, 2021

The Honorable Karl Rhoads, Chair
Senate Committee on Judiciary
Hawaii State Capitol
415 South Beretania Street
Honolulu HI 96813

RE: SB 278 - Prohibition of Micro Targeting of Political Advertising
OPPOSE

Dear Chair McKelvey and Members of the Committee:

Internet Association (IA) appreciates the opportunity to express our opposition to SB 278, which would prohibit micro targeting of political advertising. IA represents more than 40 of the world's leading internet companies and advances public policy solutions that foster innovation, promote economic growth, and empower people through the free and open internet.

IA is opposed to SB 278 because it will limit the ability of underrepresented individuals to run for office, especially in local races and disadvantaged communities which typically do not have access to large fundraising resources. Targeted political advertising has resulted in new voices being elected across the country, in races for school board, city council and even the state legislature.

SB 278's broad prohibition on the use of any online behavioral data, demographic characteristics or geolocation information below the election district level is very vague and problematic. All advertisements, whether it be for shampoo, cars or candidates running for office, use basic information like this for advertising purposes. A person watching Monday Night Football typically does not see the same advertisements if they watch "The View" the next day because those advertisements are targeting likely viewers based on these same factors. Limiting their use in elections will harm the smallest campaigns at the most local level.

In the political setting, targeting is a tool which, when used well, can reach audiences which otherwise would not hear from candidates. These communities tend to feel underrepresented and do not always turn out to vote. However, grassroots campaigning reaches new and occasional voters and encourages them to vote. Targeting has allowed candidates to reach out to voters effectively without having to raise considerable amounts of money. Candidates have successfully used this tool against opponents who have substantially more resources for traditional political mailers, yard signs, radio and television.

SB 278 would reduce the opportunities for underfunded candidates to launch grassroots campaigns. Candidates who have effectively used targeting tend to be people from underrepresented communities. Without this tool only candidates with the ability to raise significant funds will be the only viable candidates. While this prohibition may not impact higher profile races, such as those for statewide office, it will likely have a significant impact on local races for the school board, city or county councils and even the state legislature. The impact could have a chilling effect on underrepresented individuals



who may be considering a run for office.

IA and our member companies want to be partners to find solutions that work for candidates, regulators, the platforms and the public, and we have been working proactively on principles and policies that increase transparency. IA is interested in working with your committee and the sponsor on addressing these issues. However, we believe SB 278 will not result in more transparency but rather limiting who will be able to run for political office.

For these reasons IA urges the committee not to move SB 278 forward. If you have any questions please contact me at rose@internetassociation.org or 206-326-0712.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rose Feliciano', with a long horizontal line extending to the right.

Rose Feliciano
Director, Northwest Region, State Government Affairs

TESTIMONY

The Libertarian Party of Hawaii
c/o 1658 Liholiho St #205
Honolulu, HI 96822

RE: SB278 to be heard on Friday 19, at 9:30AM by video conference

Oppose

To the Senate Committee on Judiciary

This bill is in violation of the First Amendment of the US Constitution and should never be considered.

Very Truly Yours;

A handwritten signature in black ink, appearing to read 'Tracy Ryan', with a long horizontal flourish extending to the right.

Tracy Ryan
Chair, The Libertarian Party of Hawaii

SB-278

Submitted on: 2/16/2021 6:07:30 PM

Testimony for JDC on 2/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Edward B Hanel Jr	Individual	Comments	No

Comments:

SB278 is troublesome: What problem does it hope to solve? How will the prohibition be enforced fairly? There seems to be little consideration about how local law enforcement officials are supposed to reach uniform determinations about what constitutes a violation. How will alleged violations come to be known or reported? What happens if a candidate issues an advertisement that is narrowly focused on a particular geographic audience but does so without using micro-targeting data? What unintended consequences are there for an ad intended to reach a particular small political party? May an opponent call for an investigation to see if use of micro-targeting data was involved in such cases? Who would do the investigation? What funding will cover an investigation? At some point, enforcement could take on an arbitrary and capricious aspect while First Amendment issues arise. Recommend SB278 objectives be clarified immediately.

SB-278

Submitted on: 2/17/2021 4:50:29 PM

Testimony for JDC on 2/19/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Quinn	Individual	Support	No

Comments:

Dear Honorable Committee Members,

Please support SB278.

Thank you,

Andrea Quinn

TO: Members of the Judiciary

FROM: Natalie Iwasa
808-395-3233

HEARING: 9:30 a.m. Friday, February 19, 2021

SUBJECT: SB 278, Political Advertising
Prohibition based on Geographic Location - **OPPOSED**
Prohibition based on Demographic Characteristics - **OPPOSED**

Aloha Chair Rhoads and Committee Members,

Thank you for allowing me the opportunity to provide testimony on SB 278, which would prohibit political advertising based on online behavioral data, demographic characteristics or geographic location at levels smaller than electoral districts.

This bill would make it harder for candidates with smaller budgets. For example, if this bill became law, it would be illegal to send postcards to a particular neighborhood. It would also disallow political advertising based on specific age groups or other demographics.

How would the state enforce this?

Please vote "no" on SB 278.