



STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION


235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

March 14, 2022

TO: The Honorable Angus L.K. McKelvey, Chair
House Committee on Government Reform

The Honorable Tina Wildberger, Vice Chair
House Committee on Government Reform

Members of the House Committee on Government Reform

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

SUBJECT: **Testimony on S.B. No. 3164, SD 1, Relating to Campaign Finance**

Wednesday, March 16, 2022
9:00 a.m., Conference Room 309 & Videoconference

Thank you for the opportunity to testify on this bill.¹ The Campaign Spending Commission (“Commission”) supports the intent of the bill to require more transparency in disclosure of the true sources of money used for political expenditures. However, this model law, which is not based on current Campaign Finance Law, is quite complex and the Commission requests that the bill be deferred for now so the Commission and all interested stakeholders can carefully review the model legislation and see how the model legislation impacts Hawaii law as it currently exists and see if simpler language, more consistent with existing language of Campaign Finance Law, can be used.²

The recodification of the Campaign Finance Law was passed in 2010. Act 211, Sess. Laws of Hawaii 2010. The Legislature passed measures which were introduced by the Commission. The measures introduced by the Commission were the end result of a panel or committee of Hawaii attorneys who practiced in the area of campaign finance, which was convened by the Commission to study the matter and make recommendations. The same could be done in proposing legislation to address the concerns about dark money. The Commission would convene a panel of interested stakeholders and attorneys practicing in this area of law to draft legislation. The panel would use the model legislation as a guide, but instead of merely making the model legislation a new subpart of Chapter 11, Hawaii Revised Statutes, the panel

¹ The companion bill is H. B. No. 1881, which was deferred by House JHA.

² The Commission has been informed that Common Cause is working on amendments to this measure.

could identify amendments to current sections of the law that would implement the purpose of the model legislation but using language consistent with existing law. The Commission asks this Committee to hold this bill.

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 3164, SD1
RELATING TO CAMPAIGN FINANCE.

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

Common Cause Hawaii supports SB 3164, SD1, which (1) requires the maintenance of transfer records relating to certain campaign contributions and transfers, (2) requires certain covered persons to seek permission from contributors to use of transfer contributed funds for independent campaign spending, (3) requires certain major contributors to disclose and maintain relevant records relating to the identities of other contributors, (4) requires certain covered persons to file disclosure reports with the Campaign Spending Commission, (5) facilitates the identification of certain top contributors of funds for certain political advertisements, and (6) prohibits structured transactions.

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.

SB 3164, SD1's purpose is to create a robust disclosure system for those spending large sums in our elections for increased transparency and accountability. SB 3164, SD1's intent is to reveal the true source of "dark money" behind our election ads by requiring one who acts as a conduit of \$10,000 or more in a two-year election period to keep track of the large donations it receives and disclose where the money came from. SB 3164, SD1 traces back to the original source those spending in our elections and identifies the top three donors in an election ad.

In sum, the focus of SB 3164, SD1 is to bring transparency to money that is transferred from one group to another before it is spent on election ads. Thus, whenever someone contributes \$10,000 or more to another who spends that amount or more on independent campaign spending, that donor is considered a "major contributor," and such contributors must disclose to the recipient the original sources of funds for each person who gave more than \$1,000 of the money being donated. And if that money was passed on through intermediaries, the major contributor must identify those persons too.

Monies spent on independent campaign spending are known as "traceable funds." Contributions can be so designated if they were received in response to a solicitation that provided certain notice to potential contributors — i.e., notice that their money might be spent on election ads. Contributors can opt out of having their donations spent on independent campaign spending.

SB 3164, SD1 will prevent wealthy special interests, who are able to outspend everyone else to elect the candidates of their choice, from hiding their activities behind shell corporations and innocent-sounding

organizations. SB 3164, SD1 will help to end deception, restore balance to our campaign finance system, and give the people the information they need to make informed choices. People are still permitted to spend monies and their amounts are not limited by SB 3164, SD1. SB 3164, SD1 is a disclosure and transparency measure.

Common Cause Hawaii understands that SB 3164, SD1 is a complex bill, and we are committed to working with this Committee and the Campaign Spending Commission to propose changes to the bill and work on improvements to the bill. Common Cause Hawaii has suggested proposed amendments to SB 3164, SD1 to hopefully address Campaign Spending Commission's concerns and are awaiting feedback from the Commission. Common Cause Hawaii believes that SB 3164, SD1 will bring needed accountability and transparency to our campaign spending and finance laws to ensure that public trust in the system is restored.

Thank you for the opportunity to testify in support of SB 3164, SD1. If you have questions for me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii





March 15, 2022

The Honorable Angus L.K. McKelvey
Chair, House Committee on Government Reform
Hawaii State Legislature

The Honorable Tina Wildberger
Vice Chair, House Committee on Government Reform
Hawaii State Legislature

Re: Statement in Support of S.B. 3164, S.D. 1

Dear Chair McKelvey, Vice Chair Wildberger, and Members of the Committee,

Campaign Legal Center (CLC) respectfully submits this statement to the Committee in support of S.B. 3164, S.D. 1, a bill to require independent campaign spenders to disclose the original sources of their campaign funds. CLC is a nonpartisan, nonprofit organization dedicated to protecting and strengthening democracy across all levels of government. Since the organization's founding in 2002, CLC has participated in every major campaign finance case before the U.S. Supreme Court, as well as in numerous other federal and state court cases. Our work promotes every American's right to participate in the democratic process.

CLC has carefully reviewed S.B. 3164, S.D. 1, and we believe it is a well-crafted and constitutional piece of legislation. The bill is consistent with well-established U.S. Supreme Court precedent affirming the importance of the disclosure of campaign spending to "insure that the voters are fully informed about the person or group who is speaking."¹

The U.S. Supreme Court has long recognized that transparency in election spending improves the functioning of government and its responsiveness to the public. In its foundational campaign finance decision, *Buckley v. Valeo*, the Court upheld disclosure laws enacted following the Watergate scandal and identified three important interests advanced by campaign finance disclosure: (1) providing voters with information necessary to evaluate candidates and make informed decisions; (2) deterring corruption and the appearance of corruption by shining a light on campaign finances; and (3) aiding enforcement of other campaign finance laws, like contribution limits.²

Since *Buckley*, the Court has consistently reaffirmed the constitutionality of campaign finance disclosure laws. For example, in *Citizens United v. FEC*, the Court again upheld—

¹ *Citizens United v. FEC*, 558 U.S. 310, 348 (2010) (internal citations and quotation marks omitted).

² *Buckley v. Valeo*, 424 U.S. 1, 66-68 (1976) (per curiam).

by an 8-to-1 vote—the constitutionality of federal election disclosure law, stating that “transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.”³ More recently, the federal courts of appeals similarly have affirmed the constitutionality and importance of state election disclosure laws,⁴ with the First Circuit recently explaining that “a well informed electorate is as vital to the survival of a democracy as air is to the survival of human life”⁵

But *Citizens United* also opened the door to unlimited corporate spending on elections: wealthy special interests can funnel their campaign spending through webs of nonprofits and other entities that do not have to publicly disclose their donors, leaving voters in the dark about who is really funding political ads.⁶ S.B. 3164, S.D. 1 would protect and strengthen Hawaiians’ right to know who is spending big money to influence their votes by requiring large, outside spenders to publicly disclose the original sources of the money they spend in Hawaii elections. The bill also updates Hawaii’s requirement to identify top contributors in on-ad disclaimers, ensuring the public knows the largest original sources of funds behind election ads they see.⁷ S.B. 3164, S.D. 1 is a comprehensive bill to provide greater transparency in Hawaii elections, and we are committed to working with the Committee and stakeholders on the bill to accomplish this goal.

CLC respectfully urges the Committee to support S.B. 3164, S.D. 1. Thank you for the opportunity to submit this statement in support of this important legislation. If you have further questions, please do not hesitate to contact us.

Respectfully submitted,

/s/

Aaron McKean
Legal Counsel

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³ *Citizens United*, 558 U.S. at 369.

⁴ See, e.g., *Gaspee Project v. Mederos*, 13 F.4th 79 (1st Cir. 2021); *Indep. Inst. v. Williams*, 812 F.3d 787 (10th Cir. 2016); *Yamada v. Snipes*, 786 F.3d 1182 (9th Cir. 2015); *Del. Strong Families v. Attorney Gen. of Del.*, 793 F.3d 304 (3d Cir. 2015); *Vt. Right to Life Comm., Inc. v. Sorrell*, 758 F.3d 118 (2d Cir. 2014); *Justice v. Hosemann*, 771 F.3d 285 (5th Cir. 2014); *Worley v. Fla. Sec’y of State*, 717 F.3d 1244 (11th Cir. 2013); *Real Truth About Abortion Inc. v. FEC*, 681 F.3d 544 (4th Cir. 2012); *Ctr. for Individual Freedom v. Madigan*, 697 F.3d 464 (7th Cir. 2012); *Nat’l Org. for Marriage v. McKee*, 649 F.3d 34 (1st Cir. 2011); *Human Life of Wash. v. Brumsickle*, 624 F.3d 990 (9th Cir. 2010); *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc).

⁵ *Gaspee Project*, 13 F.4th at 95.

⁶ Dark money groups spent more than \$1 billion in federal elections alone. Anna Massoglia & Karl Evers-Hillstrom, ‘Dark Money’ Topped \$1 Billion in 2020, Largely Boosting Democrats, CTR. FOR RESPONSIVE POLITICS (Mar. 17, 2021), <https://www.opensecrets.org/news/2021/03/one-billion-dark-money-2020-electioncycle/>. The effects of dark money spending can be even more pronounced at the state level. See CHISUN LEE, ET AL., BRENNAN CTR. FOR JUSTICE, SECRET SPENDING IN THE STATES 3, 10-11 (2016), <https://www.brennancenter.org/publication/secret-spending-states>.

⁷ These types of on-ad disclaimers “serve the salutary purpose of helping the public to understand where ‘money comes from.’” *Gaspee Project*, 13 F.4th at 95 (citing *Buckley v. Valeo*, 424 U.S. at 66).