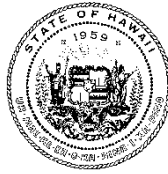


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STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION


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HONOLULU, HAWAII 96813

February 14, 2023

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

The Honorable Mike Gabbard, Vice Chair
Senate Committee on Judiciary

Members of the Senate Committee on Judiciary

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

SUBJECT: **Testimony on S.B. No. 997, Relating to Elections.**

Thursday, February 16, 2023
9:30 a.m., Conference Room 16 & Videoconference

Thank you for the opportunity to testify on this bill. The Campaign Spending Commission (“Commission”) opposes this bill.

Section 1 of this bill includes three new sections to Chapter 11, Hawaii Revised Statutes (“HRS”) that propose: (1) to create a new top-contributors’ identification requirement; (2) to prohibit certain structured transactions to evade the requirements of HRS Chapter 11; and (3) to provide for new penalties for violations of HRS §§ 11-335(b)(8) or 11-341(b)(9). Section 2 of the bill adds seven new definitions to HRS §11-302 and amends the definitions of donation, donor, electioneering communication, expenditure, and independent expenditure. Section 3 of the bill amends HRS §11-335(b) by changing the requirement of certain information from the schedules filed with noncandidate committee reports. Section 4 of the bill amends HRS §11-338 by removing certain information required for the late contribution report. Section 5 of the bill amends HRS §11-341 by replacing “expenditure” with “disbursement,” and increases the threshold for the reporting of a disbursement for electioneering communication from \$1,000 to \$2,000. Section 6 of the bill amends HRS §11-345 by requiring noncandidate committees that make only independent expenditures and spends more than \$10,000 or receives more than \$10,000 in in-kind contribution in a two-year election period to maintain transfer records and provide certain notice (opt-out) to donors. Section 7 of the bill amends HRS §11-391(a) by applying the disclaimer requirements to only paid advertisements. Finally, Section 8 of the bill repeals HRS §11-393 that requires the identification of certain top contributors.

In 2022, the Legislature passed H.B. No. 2416, H.D.2, S.D.1, C.D.1, on May 3, 2022. The measure was approved by Governor Ige on June 27, 2022 as Act 169, to take effect on January 1, 2023, in time for the 2024 elections. In short, Act 169 requires an Internal Revenue Service 501(c)(4) organization, that also meets the definition of noncandidate committee, to disclose certain of its donors.

After the 2022 legislative session, the proponents of this bill informed Commission staff that the purpose of the bill was to address the reporting situation of Hui O' Maui Citizens for Change noncandidate committee, whose sole contributor for the 2018-2020 election period was Hui O' Maui, a 501(c)(4) organization. The proponents wanted the noncandidate committee to report the donors to the 501(c)(4) organization. In the proponent's opinion, Act 169 would not apply to Hui O' Maui.

Commission staff disagrees. Act 169 provides in pertinent part:

The purpose of this Act is to enhance existing campaign spending disclosure requirements to ensure that if a 501(c)(4) nonprofit organization is operating as a noncandidate committee, its campaign spending activities are disclosed to the electorate. Because organizations that meet campaign spending thresholds are currently required to disclose the identities of their contributors, under the enhanced disclosure requirements contained in this Act, organizations that meet the campaign spending thresholds as a noncandidate committee will also be required to disclose the identities of their donors.

Act 169, Sec. 1 at p. 4.

Since the passage of Act 169, for the past 10 months, the Commission has been working with the Office of Enterprise Technology Services ("ETS") on modifications to the Commission's noncandidate committee electronic filing system to implement the enhanced disclosure requirement. The modifications are scheduled to be completed in April 2023. This measure effectively repeals Act 169 before it has been given a chance thereby setting aside the time, effort, and work by Legislators, the Department of the Attorney General, ETS, and Commission staff that went into the enactment and implementation of Act 169.

The Commission respectfully requests that this Committee hold or defer this bill.



February 15, 2023

The Honorable Karl Rhoads
Chair, Senate Committee on Judiciary
Hawaii State Legislature

The Honorable Mike Gabbard
Vice Chair, Senate Committee on Judiciary
Hawaii State Legislature

Re: Statement in Support of S.B. 997

Dear Chair Rhoads, Vice Chair Gabbard, and Members of the Committee on Judiciary,

Campaign Legal Center (CLC) respectfully submits this statement to the Committee in support of S.B. 997, a bill to require noncandidate committees making only independent expenditures 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. 997, and 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

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).

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—by an 8-to-1 vote—the constitutionality of a 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, federal courts have repeatedly affirmed the constitutionality and importance of state election disclosure laws.⁴ As the U.S. Court of Appeals for the First Circuit recently explained, “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 funding political ads.⁶ S.B. 997 would protect and strengthen Hawaiians’ right to know who is spending big money to influence their votes by requiring large independent 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. 997 follows in the footsteps of recently passed election disclosure laws across the country, like Arizona’s Voters’ Right to Know Act that overwhelming passed at the ballot this past November,⁸ that seek to end secret spending by revealing the original sources of big money spent in state and local elections.

CLC respectfully urges the Committee to support S.B. 997. 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
Campaign Legal Center

³ *Citizens United*, 558 U.S. at 369.

⁴ See, e.g., *Gaspee Project v. Mederos*, 13 F.4th 79 (1st Cir. 2021) *cert. denied*, 142 S. Ct. 2647 (2022); *Smith v. Helzer*, No. 3:22-CV-00077-SLG, 2022 WL 2757421, at *4 (D. Alaska July 14, 2022); *San Franciscans Supporting Prop B v. Chiu*, No. 22-CV-02785-CRB, 2022 WL 1786573, at *4 (N.D. Cal. June 1, 2022).

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).

⁸ Elizabeth Shimek, *Arizona Leads on Stopping Secret Spending*, CAMPAIGN LEGAL CTR. (Nov. 29, 2022), <https://campaignlegal.org/update/arizona-leads-stopping-secret-spending>.

SB-997

Submitted on: 2/13/2023 7:47:52 PM

Testimony for JDC on 2/16/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Will Caron	Individual	Support	Written Testimony Only

Comments:

Please support SB997.

LATE

SB-997

Submitted on: 2/15/2023 2:26:10 PM

Testimony for JDC on 2/16/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Sandy Ma	Individual	Support	Written Testimony Only

Comments:

Dear Chair Rhoads, Vice Chair Gabbard, and Members of the Senate Judiciary Committee:

Thank you for hearing SB997, which (1) requires notice and identification of certain top donors who contributed to a noncandidate committee, (2) changes the requirement of certain information from the schedules filed with the noncandidate committee reports, (3) removes certain information required for the late contribution report., (4) increases the amount of disbursement for electioneering communication that is required to be disclosed, (5) Requires noncandidate committees that make only independent expenditures and spend over \$10,000 to maintain transfer records and provide certain notice to donors, and (6) repeals the top contribution identification requirement.

SB997's purpose is to create a robust disclosure system for those spending large sums in Hawaii's elections for increased transparency and accountability. SB997'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. SB997 traces back to the original source those spending in our elections and identifies the top three donors in an election ad.

The 2022 elections showed that PACs and SuperPACs are spending large sums of money influencing our county, state, and federal elections. See <https://www.civilbeat.org/2022/08/gov-david-ige-rails-against-super-pac-attacks-during-hawaiis-primary/>; <https://www.civilbeat.org/2022/09/a-super-pac-backed-by-the-carpenters-union-is-pouring-cash-into-this-maui-council-race/>; and <https://www.civilbeat.org/2022/08/can-patrick-brancos-mainland-backers-buy-him-a-seat-in-congress/>.

While legislators should certainly be applauded for introducing and moving bills for publicly funded elections in Hawaii and bolstering Hawaii's current partial-public funding system, SB997 is also necessary to partner in tandem with any public funding / partial-public funding system.

Even with public funding of elections, there are still PACs and SuperPACs, and SB997 will reveal the true source behind those who are attempting to purchase Hawaii's elections. Thus, SB997 is much needed to bring transparency and accountability 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 SB997.

Sandy Ma, Esq.