



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2015**

ON THE FOLLOWING MEASURE:

H.B. NO. 1491, H.D. 2, RELATING TO CAMPAIGN SPENDING.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Wednesday, April 8, 2015

TIME: 9:15 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Deirdre Marie-Iha, Deputy Attorney General

Chair Keith-Aragan and Members of the Committee:

The Department of the Attorney General supports the intent of this measure, which adds an additional level of disclosure to several portions of Hawaii's campaign finance laws to further assist voters to "follow the money" and determine the individuals, organizations, or businesses seeking to influence their vote. The Department raises a general concern regarding the current weakness of the bill's legislative history and makes several recommendations to improve the bill's chances of withstanding a constitutional challenge and achieving its intent. We urge the Committee to pass this bill, but only if these suggestions are incorporated.

We support the purpose of this bill, which is to make available to the electorate additional information about the funding source(s) of SuperPACs (noncandidate committees that make only independent expenditures) when they expend funds to influence the outcome of Hawaii's elections. Current law only requires SuperPACs to disclose the *names* of the organizations or individuals that have contributed money to them. This bill requires SuperPACs to disclose additional information to aid voters in determining the sources of funding behind those contributors to the SuperPACs.

This bill may be challenged as being unconstitutional under the First Amendment. Campaign finance disclosure laws are generally viewed as being constitutional under current federal law, if the government can show the necessity of such laws. *To aid in the defense of this bill, the Department strongly suggests that the debates and reports that will comprise the bill's legislative history include a discussion of the justification for this bill, similar to that included in the bill's purpose section.* Inclusion of Hawaii's experience with SuperPAC money during the

2012 and 2014 elections may be persuasive in supporting the need for additional disclosure required by the bill. The legislative history included thus far is helpful toward that end but would be strengthened by additional specificity and reference to data from Hawaii's recent elections.

When this bill was heard in the House, we had several significant substantive concerns. Fortunately, most of these concerns were addressed in the H.D. 1, though the legislative history still needs to be strengthened, as detailed above. (The H.D. 2 made no substantive amendments.) We make the following drafting suggestions for functionality and internal consistency.

When campaign contributions are aggregated under Hawaii law, the relevant time period for judging the total aggregated sum is usually an "election period," defined in section 11-302, Hawaii Revised Statutes (HRS), as the time from the day after one general election until the next general election for that office. The apparent intent of this bill is to follow the same concept, by providing that the aggregate for the new \$10,000 threshold added in the bill will be judged "in the aggregate since the last election[.]" The Department recommends that this phrase be replaced with "in an election period." Our campaign finance laws define "election" to include "any election for office[.]" which would include the *primary* election. If the phrase "since the last election" is retained in the bill, it may be possible for a SuperPAC to evade the new disclosure intended by the bill by encouraging contributions to be made twice, once before the primary election and once after. If that occurred, and each contribution was under \$10,000, the SuperPAC would not be subject to the additional disclosure required by this bill even if the total contribution *during the election period* well exceeded \$10,000. This result appears contrary to the bill's apparent intent. To avoid this result, the phrase "since the last election" should be replaced with "in an election period" at all but one place where it appears in the bill. (Page 5, line 16; Page 6, line 7; Page 7, lines 8 and 20-21).

The last use of the phrase "since the last election" should be removed. (Page 11, line 7). This is so because the late contributions and expenditures provision has its own aggregate period (the ten-day period between 14 days and 4 days before an election) in section 11-338(a), HRS. Section 11-338(b), which is amended by the bill, operates only within that unique aggregation period and, therefore, need not contain its own aggregation period.

Finally, the addition made to section 11-338(b), HRS, requires that for late contributions exceeding \$10,000, a SuperPAC must either (a) identify a website where the contributor's funding sources can be identified, (b) provide the name, address, occupation, and employer of each funding source of more than \$100 in the aggregate, or (c) acknowledge that the contributing entity is not subject to any state or federal disclosure reporting requirements regarding the source of the contributing entity's funds. (Page 10, line 14, to page 11, line 12.) The proposed \$100 threshold in option (b) above, is internally inconsistent with the \$500 threshold for reporting the name, address, occupation, and employer of contributors in section 11-338(a). To make the new wording internally consistent, the threshold for option (b) should be raised from \$100 to \$500. (Page 11, line 6).

The Department supports the intent of this bill and urges the Committee to pass the bill but only if these concerns, which are intended to strengthen the bill, are fully addressed. Thank you for the opportunity to testify.



STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

April 6, 2015

TO: The Honorable Gilbert S.C. Keith-Agaran, Chair
Senate Committee on Judiciary and Labor

The Honorable Maile S.L. Shimabukuro, Vice Chair
Senate Committee on Judiciary and Labor

Members of the Senate Committee on Judiciary and Labor

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

SUBJECT: **Testimony on H.B. No. 1491, H.D. 2, Relating to Campaign Spending**

Wednesday, April 8, 2015
9:15 a.m., Conference Room 016

Thank you for the opportunity to testify on this bill.¹ The Campaign Spending Commission ("Commission") supports the intent of the bill and offers the following comments.

This bill amends several sections of Hawaii Revised Statutes ("HRS") chapter 11 that relate to noncandidate committees. The purpose of the bill is to require an independent expenditure committee ("IE Committee") to disclose the true source of funding of its contributors that may not be readily apparent from the name of the organization that is identified as a contributor² to the IE Committee. This additional layer of disclosure for IE Committees would not apply if the contributor is an individual, partnership, for-profit business entity, or labor union. The Commission certainly supports more transparency in campaign finance – particularly, since we believe this bill is addressing the political spending of dark money groups which include 501(c)(4) and 501(c)(6) non-profit organizations.

Commission staff has reviewed and discussed this bill with the Department of the Attorney General. Because this bill may raise constitutional issues, the Commission will defer to the recommendations offered by that department. We would further comment that this bill would require additional fields to be built in the noncandidate committee electronic filing system which would require the services of ICSD. In discussions with ICSD, the Commission believes

¹ The companion bill in the Senate, S.B. No.1344, crossed over to the House and was heard by the House Committee on Judiciary on March 24, 2015. That committee passed the Senate measure as S.B. No. 1344, S.D. 1, H.D. 1.

² For contributions over \$10,000.

that the necessary modifications can be completed by December 31, 2015. Thus, the Commission suggests that the effective date of the bill be changed to January 1, 2016.

For the Committee members' information, in the 2014 election, IE Committees received 25 contributions that were \$10,000 or more. Moreover, 13 of those contributions would be subject to the additional disclosure requirements. A table showing this information is attached to this testimony.

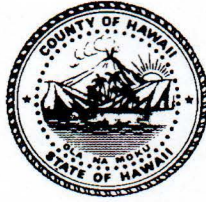
5. Top Contributors of \$10,000 or more (Sorted in Descending Order)

Independent Expenditure Committees	Contributor Name	Total Contributions
American Comeback Committee Hawaii PAC	American Comeback Committee	\$2,244,000.00
Hawaii Forward	Democratic Governors Association	\$1,280,000.00
Forward Progress	Hawaii Carpenters Market Recovery Program	\$748,723.07
Hawaii Forward	AFSCME	\$500,000.00
Maui Timeshare Ohana PAC	Ocean Resort Villa North PAC	\$450,000.00
Maui Timeshare Ohana PAC	Ocean Resort Villas PAC	\$450,000.00
Ocean Resort Villas North PAC	Ocean Resort Villas North Vacation Owners Assn.	\$450,000.00
Ocean Resort Villas PAC	Ocean Resort Villas Vacation Owners Association	\$450,000.00
NEA Advocacy Fund	National Education Association	\$299,233.00
AiKea UNITE HERE	UNITE HERE TIP State and Local	\$280,000.00
National Association of Realtors Fund	National Association of REALTORS	\$122,688.00
Jobs and Opportunity for Hawaii	Democratic Governors Association	\$100,000.00
AiKea UNITE HERE	UNITE HERE Local 5 PAC Fund	\$91,000.00
Workers for a Better Hawaii	Hawaii Government Employees Association	\$70,000.00
Hawaii Forward	Jobs & Opportunity for Hawaii	\$68,137.75
Workers for a Better Hawaii	Hawaii Committee on Political Education (COPE)	\$50,000.00
Maui Timeshare Ohana PAC	American Resort Development Association	\$40,000.00
Hawaii Center for Food Safety Action Fund	Dr. Bronner's Magic Soap	\$25,000.00
Hawaii Building & Construction Trades Council	Hawaii Building and Construction Trades Council	\$20,660.51
Hawaii Center for Food Safety Action Fund	Currier, Lavinia	\$20,000.00
Hawaii Solutions	Wong, Heidi	\$15,000.00
Education Reform Now Advocacy	Education Reform Now Advocacy	\$14,834.80
Hawaii Voter Information Project	Walden, Andrew R.	\$14,516.32
Sierra Club Hawaii PAC	Ching, Randy	\$12,000.00
Workers for a Better Hawaii	AFSCME	\$10,000.00

6. 2014 Independent Expenditures by Category

Expenditure Category	Count	%	Total	%
Advertising	115	14.06%	\$2,221,733.33	31.43%
Bank Charges & Adjustments	76	9.29%	\$2,816.95	0.04%
Employee Services	8	0.98%	\$69,483.84	0.98%
Food & Beverages	122	14.91%	\$25,039.26	0.35%
Hawaii Election Campaign Fund	1	0.12%	\$125.69	0.00%
Lease/Rent	8	0.98%	\$7,531.96	0.11%
Office Supplies	20	2.44%	\$6,075.30	0.09%
Other	106	12.96%	\$2,690,024.36	38.06%
Postage/Mailing	59	7.21%	\$699,870.33	9.90%
Printing	44	5.38%	\$337,880.11	4.78%
Professional Services	119	14.55%	\$522,381.08	7.39%
Surveys, Polls & Voter Lists	18	2.20%	\$460,374.65	6.51%
Travel & Lodging	103	12.59%	\$23,990.71	0.34%
Utilities	16	1.96%	\$819.80	0.01%

From the office of -
Council Member
District 4 – Puna Makai



Office: (808) 965-2712
Fax: (808) 965-2707
Email: gilagan@hawaiicounty.gov

GREGGOR ILAGAN

25 Aupuni Street, Hilo, Hawai'i 96720

April 6, 2015

The Honorable Gilbert S.C. Keith-Agaran, Chair
And Members of the Committee on Judiciary and Labor

Dear Chair Keith-Agaran and Committee members,

Thank you for the opportunity to provide testimony in support of House Bill 1491, HD2. I am grateful for your continued support of increased disclosure in campaign finance.

The importance of this bill should be self-evident – increased disclosure requirements shine a disinfecting light on anonymous deep-pocketed special interests.

I appreciate the reasonable amendments that have been made to this bill to strengthen it in the face of any potential constitutional challenge.

Again, thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Greggor Ilagan".

Greggor Ilagan
Council Member



49 South Hotel Street, Room 314 | Honolulu, HI 96813
www.lww-hawaii.com | 808.531.7448 | voters@lwwhawaii.com

COMMITTEE ON JUDICIARY AND LABOR

Wednesday April 8, 2015, 9:15 a.m. Room 016
HB1491 HD2: Relating to Campaign Spending
TESTIMONY
Beppie Shapiro, League of Women Voters of Hawaii

Chair Keith-Agaran, Vice-Chair Shimabukuro, and Committee Members:

The League of Women Voters of Hawaii supports HB1491 HD2. This measure would require SuperPacs to disclose whether their contributors which are not businesses or individuals (e.g. other PACS or SuperPacs) are subject to state or federal disclosure requirements, and to provide the internet address where that entity's report can be accessed or, alternatively, the name, address, occupation, and employer of each funding source to that entity.

The Introduction to HB1491 persuasively lays out the rationale for requiring the disclosure of more information on the sources of money expended by SuperPacs. Following Supreme Court decisions like Citizens United, and further court decisions, citizens are left with few options to control the unregulated flow of very large contributions to and expenditures by "independent" committees. These outsize contributions are commonly presumed to influence not only the outcome of elections (by purchasing ads and generating other media coverage) but also, unfortunately, access to and possibly even actions of elected politicians. Citizens and good government watchdogs hope to identify and publicize the identity and political agenda of large contributors, in order to generate scrutiny of actions by elected officials which might be affected by those political agenda.

At present state disclosure laws do not allow this level of identification and scrutiny. HB1491 proposes increased detailed disclosures by SuperPACs, including details of the SuperPAC's own organization and more information on the otherwise somewhat mysterious category of contributors to the SuperPAC which are not either individuals or businesses. Such contributors



49 South Hotel Street, Room 314 | Honolulu, HI 96813
www.lww-hawaii.com | 808.531.7448 | voters@lwwhawaii.com

are often other SuperPACs, creating a confusing chain of semi-anonymous organizations which hide the identities and political agenda behind the contributions.

HB1491 promises to provide some clues into this opaque system of campaign finance. Astute and dedicated observers could use the information required by this measure to try to unravel the chain of contributions and the agenda inspiring them. This analysis could assist in holding officeholders accountable to the public for their actions relevant to the agenda of major contributors.

The sooner the effective date of this legislation, the sooner Hawai'i's citizens will have some recourse when confronted with overwhelming media exposure to campaign messages whose source and ideological/business agenda are not obvious.

We urge you to pass this bill. Thank you for the opportunity to submit testimony.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: Submitted testimony for HB1491 on Apr 8, 2015 09:15AM
Date: Tuesday, April 07, 2015 9:25:42 AM

HB1491

Submitted on: 4/7/2015

Testimony for JDL on Apr 8, 2015 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Leimomi Khan	Individual	Support	No

Comments: As a citizen and voter, I appreciate this measure that brings additional transparency to contributions that are made to campaigns, especially in light of the Supreme Court decision in Citizens United. Knowing about contributions from SuperPacs will enable tracking whether such contributions not only influenced the outcome of elections, but how they may have influenced the actions of elected politicians. This measure, along with HCR53, HD1 that requests the US Congress to convene a constitutional convention to propose a constitutional amendment to overturn the United State Supreme Courts's Decision in Citizens United v Federal Election Commission, which is a long shot, at least gives hope to citizens that at least some legislators understand the need for a level playing ball park without undue influence of powerful economic forces in elections. Strongly urge your passage of HB1491, HD2.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: *Submitted testimony for HB1491 on Apr 8, 2015 09:15AM*
Date: Monday, April 06, 2015 9:00:59 PM

HB1491

Submitted on: 4/6/2015

Testimony for JDL on Apr 8, 2015 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
wynnie hee	Individual	Support	No

Comments:

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