



STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

February 13, 2015

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

The Honorable Joy A. San Buenaventura, Vice Chair
House Committee on Judiciary

Members of the House Committee on Judiciary

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

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

Tuesday, February 17, 2015
2:00 p.m., Conference Room 325

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 contributor to the IE Committee. This additional layer of disclosure for IE Committees would not apply if the contributor is an individual, partnership, corporation, 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 provided by ICSD. We are in discussion with ICSD to determine a timetable for completing such a change which could necessitate a request by the Commission to change the July 1, 2015 effective date of this bill.

¹ The companion bill in the Senate is S.B. No.1344

For the Committee members' information, in the 2014 election, IE Committees received 25 contributions that were \$10,000² 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.

² Although the bill imposes the additional disclosure requirements on contributions that aggregate more than \$100, the Commission believes that the Department of the Attorney General is recommending, for constitutional purposes, that the threshold be raised to \$10,000.

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%



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

ON THE FOLLOWING MEASURE:

S.B. NO. 1344, RELATING TO CAMPAIGN SPENDING.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Friday, February 6, 2015

TIME: 9:15 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Russell A. Suzuki, Attorney General, or
Deirdre Marie-Iha or Valri Lei Kunimoto, Deputy Attorneys General

Chair Keith-Agaran 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 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 which will comprise the bill's legislative history include a discussion of the justification for this bill, similar to that already 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.

We note that the additional disclosure required by this bill is limited to noncandidate committees making only independent expenditures (SuperPACs), and that the purpose section focuses on the multi-million dollar SuperPACs (Page 2, lines 10-17.) In practice, however, SuperPACs differ significantly in size, and a constitutional challenge may become stronger when smaller SuperPACs are impacted. To strengthen the bill, therefore, we suggest a \$10,000 contribution threshold level be added into the bill, meaning that the SuperPAC is only required to disclose the additional information when a contributor to the SuperPAC exceeds \$10,000 in the aggregate in an election period. This threshold amount matches the threshold for additional disclosure requirements for SuperPACs in the "top contributor" provision (section 11-393, Hawaii Revised Statutes). This requirement would have to be added to the bill where the triggering contribution is described. (Page 5, line 15; page 6, line 21.)

The Department also makes four drafting suggestions to improve the bill's effectiveness.

First, the contributors that are excepted from the additional disclosure requirements should be limited to individuals, labor unions, or for-profit business entities (or something similar, describing a business that makes money in the marketplace). As currently drafted, the additional disclosure is required only if the "contribution is received from an entity *other than* an individual, partnership, corporation, business entity, or labor union[.]" Page 5, lines 15-17 (emphasis added). Allowing corporations to be excluded from the additional disclosure requirement may have the unintended effect of allowing those organizations where additional disclosure is most necessary, to escape the requirements of the bill. This is so because the bill does not distinguish between *for-profit* corporations that make money in the marketplace and *non-profit* corporations, some of which may operate as political organizations but are incorporated by law. This is especially true for non-profits organized under section 501(c)(4) of the Internal Revenue Code (social welfare organizations) or other tax-exempt political organizations typically called "527s". Rather than describing the legal status of the organization (corporation, partnership, etc.), we suggest that describing their *role* (for-profit, making money in the marketplace) would make the bill more effective. With this change, this language would read: "if a contribution is received from an entity other than an individual, [~~partnership,~~

~~corporation,~~] for-profit business entity, or labor union, then the report shall state . . ." The same change will have to be made in the corresponding provisions of the bill. (Page 7, lines 1-2; page 10, lines 14-16.)

Second, the phrase "concerning the contribution" should be replaced in the description of what "state or federal disclosure reporting requirements" the SuperPAC must disclose about its contributor. (Page 5, line 20.) Read literally, it may allow a SuperPAC to disclose only that information regarding its contributor that "concerns" the contribution itself. This is an invitation for circumvention. The provision can be rendered more functional by removing that phrase and replacing it with something more general, such as ". . . reporting requirements regarding the source of the contributing entity's funds . . ." With this change, the provision would read: ". . . the report shall state whether the contributing entity is subject to any state or federal disclosure reporting requirements [~~concerning the contribution~~] regarding the source of the contributing entity's funds and . . ." This would make the requirement more general, and less subject to interpretations that are contrary to the bill's plain intent. The same change will have to be made in the corresponding provisions of the bill. (Page 7, line 6; page 10, line 19.)

Third, the alternative of listing \$100 or more funders to the contributor needs to be made more specific. The bill as drafted allows the SuperPAC to either (1) identify where, on the internet, the contributor's own funding sources can be identified, or (2) identify the funders who have funded more than \$100 to the contributor. Hawaii's campaign finance laws typically require that \$100 be given in the aggregate during an election period (general election to general election). The same requirements should be included here. (Page 6, line 4-6; page 7, lines 10-13; page 8, lines 5-7; page 11, lines 1-3.)¹

Fourth, the Department recommends that the bill be amended to reflect that some funding sources for SuperPACs may not be subject to any state or federal disclosure reporting. For example, social welfare organizations, organized under Internal Revenue Code section 501(c)(4), are not required to publicly disclose the source of their funding. Because this information may not be available to the SuperPAC operating in Hawaii, the bill should be amended to allow for a third option: the SuperPAC can disclose that their funding source is not subject to any state or

¹ The last three page and line cites given include the "aggregate" requirement but do not specify the election period. The first citation (page 6) lacks both the aggregate requirement and the election period requirement.

federal disclosure reporting requirements regarding the source of the contributing entity's funds. Social welfare organizations are required to make their tax returns public (Form 990), but they are not required to disclose the names of their funders.² Depending on how the SuperPAC's funders are organized, therefore, it is possible that there is no applicable law that would require the disclosure the bill is seeking. In the Department's view, however, requiring the SuperPAC to disclose that the source of its funds is essentially untraceable is *itself* a valuable form of disclosure. Federal case law regarding campaign finance disclosure requirements holds that "the people in our democracy are entrusted with the responsibility for judging and evaluating the relative merits of conflicting arguments. They may consider, in making their judgment, the source and credibility of the advocate." First Nat. Bank of Boston v. Bellotti, 435 U.S. 765, 791-92 (1978) (footnotes omitted). The decision to use funding that is not readily traceable to its source may fairly reflect on the credibility of the advocate.

To make this change, an additional option would have to be added to the current two options. This could be accomplished with language such as "(C) that the contributing entity is not subject to any state or federal disclosure reporting requirements regarding the source of the contributing entity's funds."³ (Page 6, lines 1-6.) The same language would have to be added into the corresponding provisions of the bill. (Page 7, line 13; page 8, line 7; page 11, line 3.)

Finally, the Department notes that two amendments in the bill appear to require a SuperPAC to disclose other contributors when it is, itself, a contributor. (Page 7, line 20, page 11, line 3.) The Department is unclear what disclosure benefit would be served by this addition, as the SuperPAC giving the contribution may be unaware (or unable to ascertain) who the *other* contributors are. If the SuperPAC is giving to another noncandidate committee, that noncandidate committee is already required to disclose its own contributors by law, so the provisions added by the bill may be redundant. The intent of this addition should be clarified. The Department may have additional comments if more information is available about this provision. If no additional disclosure benefit can be identified for these provisions, they should be removed from the bill.

² Non-profits called "527s" (political organizations) do disclose their contributors. This information is available on the IRS's website.

³ The "or" that currently follows (A) would have to be moved to the end of (B). Page 6, line 3.

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



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

COMMITTEE ON JUDICIARY

Tuesday February 17, 2015, 2 p.m. Room 325
HB1491: Relating to Campaign Spending
TESTIMONY
Beppie Shapiro, League of Women Voters of Hawaii

Chair Rhoads, Vice-Chair Buenaventura, and Committee Members:

The League of Women Voters of Hawaii supports HB1491. 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.lwv-hawaii.com | 808.531.7448 | voters@lwvhawaii.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 office-holders accountable to the public for their actions relevant to the agenda of major contributors.

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



LATE

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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, February 17, 2015

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Russell A. Suzuki, Attorney General, or
Deirdre Marie-Iha or Valri Lei Kunimoto, Deputy Attorneys General

Chair Rhoads 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 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 which will comprise the bill's legislative history include a discussion of the justification for this bill, similar to that already 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.

We note that the additional disclosure required by this bill is limited to noncandidate committees making only independent expenditures (SuperPACs), and that the purpose section focuses on the multi-million dollar SuperPACs (Page 2, lines 10-17.) In practice, however, SuperPACs differ significantly in size, and a constitutional challenge may become stronger when smaller SuperPACs are impacted. To strengthen the bill, therefore, we suggest a \$10,000 contribution threshold level be added into the bill, meaning that the SuperPAC is only required to disclose the additional information when a contributor to the SuperPAC exceeds \$10,000 in the aggregate in an election period. This threshold amount matches the threshold for additional disclosure requirements for SuperPACs in the "top contributor" provision (section 11-393, Hawaii Revised Statutes). This requirement would have to be added to the bill where the triggering contribution is described. (Page 5, line 15; page 6, line 21.)

The Department also makes four drafting suggestions to improve the bill's effectiveness.

First, the contributors that are excepted from the additional disclosure requirements should be limited to individuals, labor unions, or for-profit business entities (or something similar, describing a business that makes money in the marketplace). As currently drafted, the additional disclosure is required only if the "contribution is received from an entity *other than* an individual, partnership, corporation, business entity, or labor union[.]" Page 5, lines 15-17 (emphasis added). Allowing corporations to be excluded from the additional disclosure requirement may have the unintended effect of allowing those organizations where additional disclosure is most necessary, to escape the requirements of the bill. This is so because the bill does not distinguish between *for-profit* corporations that make money in the marketplace and *non-profit* corporations, some of which may operate as political organizations but are incorporated by law. This is especially true for non-profits organized under section 501(c)(4) of the Internal Revenue Code (social welfare organizations) or other tax-exempt political organizations typically called "527s". Rather than describing the legal status of the organization (corporation, partnership, etc.), we suggest that describing their *role* (for-profit, making money in the marketplace) would make the bill more effective. With this change, this language would read: "if a contribution is received from an entity other than an individual, [~~partnership,~~

~~corporation,~~] for-profit business entity, or labor union, then the report shall state . . ." The same change will have to be made in the corresponding provisions of the bill. (Page 7, lines 1-2; page 10, lines 14-16.)

Second, the phrase "concerning the contribution" should be replaced in the description of what "state or federal disclosure reporting requirements" the SuperPAC must disclose about its contributor. (Page 5, line 20.) Read literally, it may allow a SuperPAC to disclose only that information regarding its contributor that "concerns" the contribution itself. This is an invitation for circumvention. The provision can be rendered more functional by removing that phrase and replacing it with something more general, such as ". . . reporting requirements regarding the source of the contributing entity's funds . . ." With this change, the provision would read: ". . . the report shall state whether the contributing entity is subject to any state or federal disclosure reporting requirements [~~concerning the contribution~~] regarding the source of the contributing entity's funds and . . ." This would make the requirement more general, and less subject to interpretations that are contrary to the bill's plain intent. The same change will have to be made in the corresponding provisions of the bill. (Page 7, line 6; page 10, line 19.)

Third, the alternative of listing \$100 or more funders to the contributor needs to be made more specific. The bill as drafted allows the SuperPAC to either (1) identify where, on the internet, the contributor's own funding sources can be identified, or (2) identify the funders who have funded more than \$100 to the contributor. Hawaii's campaign finance laws typically require that \$100 be given in the aggregate during an election period (general election to general election). The same requirements should be included here. (Page 6, line 4-6; page 7, lines 10-13; page 8, lines 5-7; page 11, lines 1-3.)¹

Fourth, the Department recommends that the bill be amended to reflect that some funding sources for SuperPACs may not be subject to any state or federal disclosure reporting. For example, social welfare organizations, organized under Internal Revenue Code section 501(c)(4), are not required to publicly disclose the source of their funding. Because this information may not be available to the SuperPAC operating in Hawaii, the bill should be amended to allow for a third option: the SuperPAC can disclose that their funding source is not subject to any state or

¹ The last three page and line cites given include the "aggregate" requirement but do not specify the election period. The first citation (page 6) lacks both the aggregate requirement and the election period requirement.

federal disclosure reporting requirements regarding the source of the contributing entity's funds. Social welfare organizations are required to make their tax returns public (Form 990), but they are not required to disclose the names of their funders.² Depending on how the SuperPAC's funders are organized, therefore, it is possible that there is no applicable law that would require the disclosure the bill is seeking. In the Department's view, however, requiring the SuperPAC to disclose that the source of its funds is essentially untraceable is *itself* a valuable form of disclosure. Federal case law regarding campaign finance disclosure requirements holds that "the people in our democracy are entrusted with the responsibility for judging and evaluating the relative merits of conflicting arguments. They may consider, in making their judgment, the source and credibility of the advocate." First Nat. Bank of Boston v. Bellotti, 435 U.S. 765, 791-92 (1978) (footnotes omitted). The decision to use funding that is not readily traceable to its source may fairly reflect on the credibility of the advocate.

To make this change, an additional option would have to be added to the current two options. This could be accomplished with language such as "(C) that the contributing entity is not subject to any state or federal disclosure reporting requirements regarding the source of the contributing entity's funds."³ (Page 6, lines 1-6.) The same language would have to be added into the corresponding provisions of the bill. (Page 7, line 13; page 8, line 7; page 11, line 3.)

Finally, the Department notes that two amendments in the bill appear to require a SuperPAC to disclose other contributors when it is, itself, a contributor. (Page 7, line 20, page 11, line 3.) The Department is unclear what disclosure benefit would be served by this addition, as the SuperPAC giving the contribution may be unaware (or unable to ascertain) who the *other* contributors are. If the SuperPAC is giving to another noncandidate committee, that noncandidate committee is already required to disclose its own contributors by law, so the provisions added by the bill may be redundant. The intent of this addition should be clarified. The Department may have additional comments if more information is available about this provision. If no additional disclosure benefit can be identified for these provisions, they should be removed from the bill.

² Non-profits called "527s" (political organizations) do disclose their contributors. This information is available on the IRS's website.

³ The "or" that currently follows (A) would have to be moved to the end of (B). Page 6, line 3.

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