



STATE OF HAWAII  
CAMPAIGN SPENDING COMMISSION

235 SOUTH BERETANIA STREET, ROOM 300  
HONOLULU, HAWAII 96813

February 23, 2021

TO: The Honorable Mark M. Nakashima, Chair  
House Committee on Judiciary & Hawaiian Affairs

The Honorable Scot Z. Matayoshi, Vice Chair  
House Committee on Judiciary & Hawaiian Affairs

Members of the House Committee on Judiciary & Hawaiian Affairs

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

SUBJECT: **Testimony on H.B. No. 1118, HD 1, Relating to Campaign Spending.**

Wednesday, February 24, 2021  
2:00 p.m., Via Video Conference

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

Section 1 of the bill, in part, states that "the legislature finds that dark money is defined as funds raised for the purpose of influencing elections by nonprofit organizations that are not required to disclose the identities of their donors. Dark money sometimes comes from Internal Revenue Code 501(c)(4) organizations that are not required to disclose the identity of their donors. By doing so, there is a lack of transparency that fails to inform the public on who is trying to influence an election. Although dark money can come in through different tax-exempt organizations, this Act attempts to address one area of dark money through the 501(c)(4) organizations." Section 1 goes on to find that IRC 501(c)(4) organizations are tax-exempt social welfare organizations that can engage in some political activity, so long as that is not the organizations' primary activity. Section 1 concludes that the purpose of this Act is to provide more transparency in elections by requiring any organization financially involved in the political process to file disclosure reports with the Commission and requiring noncandidate committees to provide to the Commission a list of donors whose money was given by a 501(c)(4) organization to the noncandidate committee.

Section 2 of the bill amends the definition of "noncandidate committee" in Hawaii Revised Statutes ("HRS") §11-302 by deleting the requirement that a person "has the purpose of making or receiving contributions." The Commission cautions against amending the definition of noncandidate committee. The definition of noncandidate committee, as presently written, was

challenged as being unconstitutionally overbroad in federal court following the United States Supreme Court's decision in Citizens United. The Hawaii federal trial court upheld the definition of noncandidate committee. Yamada v. Weaver, 872 F.Supp.2d 1023 (D. Haw. 2012). The trial court's decision was affirmed on appeal. Yamada v. Snipes, 786 F.3d 1182 (9<sup>th</sup> Cir. 2015). If the Legislature changes the definition of noncandidate committee, then the Yamada cases will no longer control this issue. A future challenge to the definition could very well have a different outcome. The amendment proposed by this bill clearly makes the definition of noncandidate committee broader.

Section 3 of the bill amends HRS §11-335(b)(1)(B) by adding a new paragraph (8) that requires a noncandidate committee that receives a contribution from a 501(c)(4) organization to provide a list of donors to a 501(c)(4) organization whose money was used to pay for the noncandidate committee's advertisement or electioneering communication. How is the noncandidate committee going to obtain this information? Federal law does not require 501(c)(4) organizations to disclose their donors. Further, even if a list of donors could be obtained, since the tax-exempt organization made a contribution from its treasury to the noncandidate committee, how can the tax-exempt organization, or even the noncandidate committee, know which donor's money was used for the advertisement or electioneering communication? The issue of whether a state can legally force the disclosure of a 501(c)(4) organization's donor,<sup>1</sup> where federal law allows for the nondisclosure of its donors, and where the donors themselves did not engage in political spending in Hawaii, needs to be addressed.

The Commission opposes this bill and asks this Committee to defer or hold this bill until the Hawaii Attorney General can weigh in on this bill. The Commission will, of course, defer to that office.

---

<sup>1</sup> The donor to the 501(c)(4) organization did not donate to the noncandidate committee, rather the 501(c)(4) organization made the contribution to the Super PAC. The noncandidate committee is required to report all contributions from the 501(c)(4) organization.

Statement Before The  
**HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS**  
Wednesday, February 24, 2021  
2:00 PM  
Via Videoconference, Conference Room 325

in consideration of  
**HB 1118, HD1**  
**RELATING TO CAMPAIGN SPENDING.**

Chair NAKASHIMA, Vice Chair MATAYOSHI, and Members of the Judiciary & Hawaiian Affairs Committee

Common Cause Hawaii provides comments on HB 1118, HD1, which (1) requires any organization, association, party, or individual that is financially involved in the political process to file a financial disclosure with the campaign spending commission and (2) requires noncandidate committees to provide to the campaign spending commission a list of donors whose money was given by a 501(c)(4) organization to the noncandidate committee to fund an advertisement or electioneering communication.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening democracy through improving our campaign finance system with laws that amplify the voices of everyday Americans.

Section 3 of HB 1118, HD1 requires noncandidate committees to provide to the Campaign Spending Commission a list of donors whose money was given by a 501(c)(4) organization to the noncandidate committee to fund an advertisement or electioneering communication. This will provide more transparency in elections. However, the IRS Final Regulations specify that 501(c)(4)s do not have to disclose the names of donors of \$5,000 or more on Schedule B (Schedule of Contributors). [See https://www.federalregister.gov/documents/2020/05/28/2020-11465/guidance-under-section-6033-regarding-the-reporting-requirements-of-exempt-organizations](https://www.federalregister.gov/documents/2020/05/28/2020-11465/guidance-under-section-6033-regarding-the-reporting-requirements-of-exempt-organizations). It is unclear, given the May 2020 IRS Final Regulations, how the list of donors will be obtained from 501(c)(4) organizations.

Thank you for the opportunity to provide comments on HB 1118, HD1. If you have further questions of me, please contact me at [sma@commoncause.org](mailto:sma@commoncause.org).

Very respectfully yours,

Sandy Ma  
Executive Director, Common Cause Hawaii