

Statement Before The
SENATE COMMITTEE ON JUDICIARY
Tuesday, March 22, 2022
9:31 AM
Via Video Conference and Conference Room 016

in consideration of
HB 2416, HD2

RELATING TO CAMPAIGN SPENDING.

Chair RHOADS, Vice Chair KEOHOKALOLE, and Members of the Senate Judiciary Committee

Common Cause Hawaii provides comments on HB 2416, HD2, which (1) informs the public of the true sources of dark money contributions by requiring section 501(c)(4) nonprofit organizations to disclose the name and address of donors who donate an aggregate of more than \$100, with certain exceptions and (2) adds definitions.

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.

Common Cause Hawaii understands that the State has an important governmental interest in having an informed electorate who knows who is spending in our elections to try to influence our votes. Campaign finance disclosures are critical to serving this important governmental and public interest.

Common Cause Hawaii is a major proponent of robust campaign finance disclosure laws, such as SB3164, SD1, HD1. However, Common Cause Hawaii is concerned by HB 2416, HD2, as it only seeks disclosures of nonprofits organizations defined as 501(c)(4), at page 6, at lines 11-13, and that must also register as noncandidate committees.

It is unclear why only (c)(4)s are covered by HB 2416, HD2. Chambers of commerce, unions, etc. are nonprofits. Limited liability organizations and other business entities should also be subject to reporting requirements as they donate to candidate and noncandidate committees -- PACs and SuperPACs -- and form such entities, spending in elections to influence our votes. This legislature should be using its resources to ensure that everyone is not improperly using funds to influence the political process. This legislature should not only be targeting a particular group, thereby allowing others to have special, preferential treatment, leading to more corruption.

Thank you for the opportunity to provide comments on HB 2416, HD2. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii



SENATE COMMITTEE ON JUDICIARY

March 22, 2022 9:31 AM Conference Room 016

In Opposition to HB2416 HD2, Relating to Campaign Spending

Aloha Chair Rhoads, Vice Chair Keohokalole, and Members of the Judiciary Committee,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i respectfully **opposes** HB2416 HD2, Relating to Campaign Spending.

We appreciate the ostensible purpose of this measure to limit the undue influence of money in politics. **However, this particular bill instead clearly intends to limit Hawai'i residents' informed participation in electoral campaigns, provided through the extensive, long-standing, and well-known candidate review and endorsement service provided by the Sierra Club of Hawai'i.**

The Sierra Club of Hawai'i has long endeavored – through hundreds of volunteer hours researching, interviewing, and discussing the dozens of candidates for local, state and federal offices each election season – to provide Hawai'i voters with more information regarding those individuals most likely to advance our shared environmental interests. Our endorsement process is publicly available¹ and the fact that we are an endorsing entity is well known to our members and the general public. The administrative burden and costs that this measure would impose in carrying out this service – including having the national director of the Sierra Club deliver a written confirmation to every donor, of any amount, who does not consent to having their donations used for “electioneering, independent expenditures, or contributions” – would be of such magnitude as to force the Sierra Club of Hawai'i to end this endorsement service. **As a result, this measure may effectively foreclose the Sierra Club of Hawai'i in supporting informed decisionmaking by Hawai'i voters.**

Moreover, this measure would effectively prevent many individuals, including those who do not have the time or resources to vet every candidate for office, from supporting this important work. Political science research confirms that disclosure of small donations may impact individuals' participation and donation levels;² such an impact may be especially heightened in Hawai'i, where individual privacy is particularly valued. This measure would

¹ How the Sierra Club endorses candidates, <https://sierraclubhawaii.org/blog/how-the-sierra-club-of-hawaii-endorses-candidates> (last visited March 19, 2022).

² Ray La Raja, *Campaign finance laws that make small donations public may lead to fewer people contributing and to smaller donations*, LONDON SCHOOL OF ECONOMICS, January 7, 2015, available at <https://blogs.lse.ac.uk/usappblog/2015/01/07/campaign-finance-laws-that-make-small-donations-public-may-lead-to-fewer-people-contributing-and-to-smaller-donations/>.

require all Sierra Club donors to consent to the disclosure of their personal information, including their names and addresses, as a condition of supporting our endorsement work. **Accordingly, everyday individuals would be significantly discouraged from providing even the smallest donations to support the Sierra Club of Hawai'i's critical and well-known work in getting additional information to our members and the public at large about their ballot choices.** Notably, on July 1, 2021, the United States Supreme Court ruled that a similar law requiring the names and addresses of nonprofit donors to be disclosed was unconstitutional.³

Accordingly, while we do support meaningful efforts to limit the undue influence of money in politics, the Sierra Club of Hawai'i strongly believes that this measure would instead limit informed voter participation at the polls. Therefore, we respectfully urge the Committee to **HOLD** this measure.

³ *Americans for Prosperity Foundation v. Bonta*, 141 S. Ct. 2373 (2021).



STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

March 21, 2022

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

The Honorable Jarrett Keohokalole, 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 H.B. No. 2416, HD 2, Relating to Campaign Spending**

Tuesday, March 22, 2022
9:31 a.m., Conference Room 016 & Videoconference

Thank you for the opportunity to testify on this bill. The Campaign Spending Commission (“Commission”) appreciates the intent of this important disclosure bill. The Commission believes that transparency in political spending is a primary goal of campaign spending laws. The Commission provides the following comments.

The purpose of the measure is to require tax-exempt organizations under IRC section 501(c)(4) to disclose donors of more than \$100 if the organizations make expenditures in state or local elections. In the past, the Commission did not believe that the state could require the disclosure of donors to IRC section 501(c)(4) organizations because the Internal Revenue Service did not require the disclosure of donors. The Commission’s testimony to House GVR and JHA last session on H.B. No. 1118, reflected this position. More recently, the appellate court in Gaspee Project v. Mederos, 13 F.4th 79 (1st Cir. 2021), held that Rhode Island could require the disclosure of donors under some circumstances. The Commission now believes Hawaii can require the disclosure of donors. The Commission participated in the drafting of this measure. However, the Commission has a few concerns about the measure in its present form.

The measure requires the disclosure of donors who donate more than \$100 to the nonprofit organization.¹ *See, e.g.*, page 12, line 10. The Commission believes this threshold spending amount for the disclosure of donors may be too low. In Gaspee, the court approved of

¹ The Commission assumes the nonprofit organization reporting donors is a noncandidate committee required to register with the Commission pursuant to HRS §11-321(g).

the disclosure of “donors of over \$1,000.” Gaspee at 88-89. Under Chapter 11, Hawaii Revised Statutes (“HRS”), candidates and noncandidate committees must disclose contributors who give in the aggregate more than \$100 during an election period. HRS §§11-333(b)(1), 11-335(b)(1). By definition a “contribution” has the purpose of influencing the nomination or election of a person to office or influencing the outcome of any ballot issue. HRS §11-302. The new definition of “donation” proposed by the measure does not contain that direct nexus to campaign spending (page 6, lines 4-7). Although it is safe to assume that contributors know their contributions will be used for making expenditures, it is not true for donors to nonprofit organizations. Thus, the Commission believes that the state cannot set the threshold spending limit for the disclosure of donations at the same amount for the disclosure of contributions. The threshold should be higher, as it was in the Gaspee Project case (over \$1,000).

Section 6 of the measure pertains to electioneering communications. Paragraphs (6) and (7), on pages 16-17, **should not be repealed or amended at all**. If a person contributed to a noncandidate committee or other organization for the purpose of publishing or broadcasting the electioneering communications, then that person should be identified in the statement of information. The new donor information should be in a new paragraph (8) and should read:

“(8) If the expenditures were made by a nonprofit organization, the amount and date of deposit of each donation received and the name and address of each donor making a donation aggregating more than \$100² during an election period, which was not previously reported pursuant to section 11-335; provided that a schedule filed pursuant to this section shall not include a donor if the donor has not provided consent pursuant to section 11-____.”

What is now paragraph (8) will be paragraph (9) and what is now paragraph (9) will be paragraph (10). If worded this way, the new paragraph (8) replaces the “top three donors” language but will make the paragraph consistent with the language in Section 5, pages 14, lines 20-21, to page 15, lines 1-7 (late contributions report), and Section 4, page 12, lines 7-15 (noncandidate committee reports). Also, by not amending paragraph (6), the use of “top three contributors” would be avoided. The use of the term there, conflicts with the definition of “top contributor” in HRS §11-393 and is thus confusing. Section 9 of this bill amends HRS §11-393(e) which clearly shows that the definition of “top contributor” in the latter statute conflicts with the use of “top contributor” in this bill. Further, HRS §11-341(b), which Section 5 of this bill is amending, already refers to HRS §11-393 in what is now paragraph (9), thereby making the risk of confusion even greater.

Finally, the Commission notes that the amendment made to “disclosure date” on page 18, lines 2-6, is not consistent with the Commission’s attempt to restore the threshold amount for filing a statement of information from “more than \$1,000” to “more than \$2,000,” and to require the filing of an additional statement of information on the date of any subsequent public

² As noted above, the Commission believes that the threshold for the reporting of a donation (over \$100) is too low.

distribution of electioneering communications during the calendar year. *See*, Section 2 of H.B. No. 1888, H.D. 2. The Commission asks that this Committee replace this bill's definition of disclosure date with the one contained in the House Bill No. 1888, H.D. 2 (page 3, lines 3-12). If this change is made, a corresponding amendment to the threshold amount of \$1,000 in subsection (a) of HRS §11-341, must also be made. *See*, Section 2, page 2, line 19 of H.B. 1888, H.D. 2.



Committee: Senate Committee on the Judiciary
Hearing Date/Time: Tuesday, March 22, 2022 at 9:31 A.M.
Place: Conference Room 016 and Via Videoconference
Re: *Testimony of the ACLU of Hawai'i with comments on HB 2416, HD2*

Dear Chair Rhoads, Vice Chair Keohokalole and members of the Committee:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") appreciates the intent of HB 2416, HD 2, and submits comments with suggested amendments.

The purpose of HB 2416, HD2 is to enhance existing campaign spending disclosure requirements to ensure that the true source of campaign spending is disclosed to the electorate and to enhance existing disclosure requirements to deter corruption or the appearance of corruption and to enable the gathering of data necessary to detect violations of campaign finance laws.

While it seems clear that the intent of HB 2416, HD2 is to limit its applicability to nonprofit organizations that are subject to Chapter 11 as noncandidate committees, further clarification would be helpful. We respectfully recommend the following amendments:

Section 2. Chapter 11, Hawai'i Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows.

“§11 – Donors; consent; notice. (a) Nonprofit organizations subject to this chapter and operating as a noncandidate committee may use a donation for electioneering communications, independent expenditures, or contributions only upon receipt of written consent from the donor to use the donation for electioneering communications, independent expenditures or contributions.

(b) Nonprofit organizations subject to this chapter and operating as a noncandidate committee shall provide written notice to donors that the donor's name and address may be reported pursuant to this chapter in a public document if the donor provides written consent to use the donation for electioneering communications, expenditures, or contributions.

(c) If the donor fails to provide written consent that the donation may be used for electioneering communications, independent expenditures, or contributions, the nonprofit organization shall, within thirty days of receipt of the donation, transmit to the donor a written confirmation by the nonprofit organization's highest ranking official that the donation will not be used for

electioneering communications, independent expenditures, or contributions; and the name and address of the donor will not be reported by the nonprofit organization pursuant to this chapter.

(d) Only a nonprofit organization subject to this chapter and operating as a noncandidate committee will be subject to these reporting requirements.

In addition, we recommend that the definition of “donor” in Section 3 of the HD2 is revised to read as follows:

“Donor” means a person that makes a donation to a nonprofit organization subject to this chapter and operating as a noncandidate committee.

Finally, in section 4 of the HD2, we recommend that paragraph (8) on page 12 be amended to read as follows:

(8) For donations received by a nonprofit organization subject to this chapter and operating as a noncandidate committee, the amount and date of deposit of each donation received and the name and address of each donor making a donation aggregating more than \$100 during an election period, which was not previously reported pursuant to this section; provided that a schedule filed pursuant to this section shall not include a donor if the donor has not provided consent pursuant to section 11-

Absent such clarifying wording, these new provisions would raise a few concerns for 501(c)(4) organizations not operating as a noncandidate committee. One concern is the administrative burden that would be placed on these social welfare organizations. Another is that unrestricted donations made to these nonprofit organizations would effectively be converted to restricted donations. And third is confusion as to how to comply with the provisions as they provide no time limit and no indication whether they apply retroactively and, if so, how far back.

Additionally, we agree with the previously stated concerns of the Campaign Spending Commission that to the extent this bill requires the disclosure of donors who donate more than \$100 to a nonprofit organization, this spending amount for the disclosure of donors may be too low. We agree that an amount of \$1,000 is more appropriate and more in line with current law.

Thank you for the opportunity to submit testimony.

Sincerely,

Joshua Wisch
Executive Director
ACLU of Hawai‘i

Chair Rhoads and Members of the Committee

March 22, 2022

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The mission of the ACLU of Hawai‘i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai‘i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai‘i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai‘i has been serving Hawai‘i for over 50 years.



Hawai'i

Children's Action Network Speaks!

Building a unified voice for Hawai'i's children

Hawai'i Children's Action Network Speaks! is a nonpartisan 501c4 nonprofit committed to advocating for children and their families. Our core issues are safety, health, and education.

To: Senator Rhoads, Chair
Senator Keahokalole, Vice Chair
Senate Committee on Judiciary

Re: **HB 2416 HD2, Relating to Campaign Spending**
03-22-22 9:31 AM

On behalf of Hawaii Children's Action Network Speaks!, thank you for the opportunity to **testify in OPPOSITION of House Bill 2416 HD2, relating to campaign spending.**

We appreciate efforts that seek to limit the undue influence of money in politics. However, HCAN Speaks! is concerned that HB 2416, HD2, only seeks disclosures of nonprofit organizations defined as 501(c)(4)s. It is unclear why only one type of non-profit business is targeted by the measure. Chambers of commerce, unions, etc. are nonprofits not covered by this bill, nor are limited liability organizations that form and/or donate to candidate and non-candidate committees.

We urge the legislature to use its resources to ensure that **no one** is improperly using funds to influence the political process. This measure targets only one particular group of non-profits, thereby allowing others to have special, preferential treatment.

We urge you to HOLD this measure; however, if it does move ahead we encourage you to expand the types of organizations required to report, and to increase the threshold for reporting as suggested by the Hawaii Campaign Spending Commission.

Again, we do support meaningful efforts to limit the undue influence of money in politics, but do not agree that this measure accomplishes that goal. Accordingly, we respectfully urge you to **HOLD this measure.**

Thank you,

Deborah Zysman,
Executive Director

HB-2416-HD-2

Submitted on: 3/19/2022 9:57:06 AM

Testimony for JDC on 3/22/2022 9:31:00 AM

Submitted By	Organization	Testifier Position	Testify
John Bickel	Individual	Support	Written Testimony Only

Comments:

More transparency is better.

HB-2416-HD-2

Submitted on: 3/21/2022 11:35:11 AM

Testimony for JDC on 3/22/2022 9:31:00 AM

Submitted By	Organization	Testifier Position	Testify
Diane Ware	Individual	Oppose	Written Testimony Only

Comments:

Dear Chair and Committee Members,

I am very concerned about "dark money" but bill HB2416 HD2 is poorly written and poorly thought out. If the intent is to target "dark money" then this law should be applied to ALL organizations engaged in elections. What this bill in fact does is target grassroots organizations that seek to create opportunities for underrepresented communities by inundating them with reporting requirements to the extent they're incapacitated from doing anything else. We know this issue first hand as a grassroots org.

Please defer this bill until more community engagement can occur so that we can collectively develop legislation to get at the heart of "dark money".

Respectfully,

Diane Ware, 99-7815 Kapoha Pl, Volcano Hi 96785