

Statement Before The
Friday, February 11, 2022
9:30 AM
Via Videoconference, Conference Room 309

in consideration of
HB 2416, HD1 PROPOSED

RELATING TO CAMPAIGN SPENDING.

Chair McKELVEY, Vice Chair WILDBERGER, and Members of the House Government Reform Committee

Common Cause Hawaii provides comments on HB 2416, HD1 Proposed, which (1) informs the public of the true sources of dark money contributions by requiring "persons," which includes 501(c)(4) organizations, to disclose the name and address of donors who donate an aggregate of more than \$100, with certain exceptions, and 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 HB 1881, HD1. However, Common Cause Hawaii is concerned by HB 2416, HD1 Proposed, as it only seeks disclosures of nonprofits organizations defined as 501(c)(4), at page 6, at lines 11-13.

It is unclear why only (c)(4)s are covered by HB 2416, HD1 Proposed. 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 treatment, leading to more corruption.

Thank you for the opportunity to provide comments on HB 2416, HD1 Proposed. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii

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STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

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February 10, 2022

TO: The Honorable Angus L.K. McKelvey, Chair
House Committee on Government Reform

The Honorable Tina Wildberger, Vice Chair
House Committee on Government Reform

Members of the House Committee on Government Reform

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

SUBJECT: **Testimony on H.B. No. 2416, Relating to Campaign Spending
(Proposed HD1)**

Friday, February 11, 2022
09:30 a.m., Via Videoconference

Thank you for the opportunity to testify on this bill. The Campaign Spending Commission (“Commission”) appreciates the intent of this bill and 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 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. However, the Commission has a few concerns about the measure.

The measure requires the disclosure of donors who donate more than \$100 to the nonprofit organization.¹ *See, e.g.*, page 11, lines 7-9. 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. 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.

Section 4 of the measure pertains to the late contribution report. For clarity, on page 14, line 8, replace “For donations received by a nonprofit organization,” with “For a nonprofit organization filing a late contribution report, . . .” At line 13, “this section” should be replaced by “section 11-335(b)(8).”

Section 5 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 \$100 during an election period, which was not previously reported pursuant to section 11-335(b)(8); provided that a statement filled pursuant to this section shall not include a donor if: (A) . . . (B) . . .”

If these changes are made, then the definition of “last in, first out” is not needed and can be deleted from the measure. Also, the use of “top three contributors” would not be needed. The use of the term here conflicts with the definition of “top contributor” in HRS §11-393.

Finally, the Commission notes that the amendment made to “disclosure date” on page 18, lines 12-16, 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 distribution of electioneering communications during the calendar year. *See*, H.B. No. 1425.



SIERRA CLUB

HAWAII CHAPTER

HOUSE COMMITTEE ON GOVERNMENT REFORM

February 11, 2022 9:30 AM Videoconference

In Opposition to HB2416 and HB2416 Proposed HD1, Relating to Campaign Spending

Aloha Chair McKelvey, Vice Chair Wildberger, and Members of the Government Reform Committee,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i respectfully opposes HB2416 and HB2416 Proposed HD1, Relating to Campaign Spending.

We appreciate efforts that seek to limit the undue influence of money in politics. **However, this particular bill may have a chilling effect on individuals' political participation.** Political science research shows that disclosure of small donations may impact individuals' participation and donation levels;¹ such an impact may be especially heightened in Hawai'i, where individual privacy is particularly valued. Accordingly, a measure such as this may discourage those who are unable to testify on measures or vet dozens of candidates for office due to work or other obligations, from participating in such legislative and electoral processes through their support of organizations like the Sierra Club.

Moreover, this measure may lead to harassment and intimidation of individuals based on their organizational affiliations. For example, California adopted a law, similar to this measure, that required public disclosure of political donations of more than \$100. Those who subsequently donated to stop a ballot initiative aimed at prohibiting the marriage of same sex couples found their home addresses, employers, and contribution amounts posted on Google maps. Donors in favor of marriage equality had their employers targeted, their businesses boycotted, and even received death threats.² Notably, on July 1, 2021, the United States Supreme Court ruled that this California law was unconstitutional.

Again, we do support meaningful efforts to limit the undue influence of money in politics, but feel that the targeting of small donors, as proposed in HB2416 and its Proposed HD1, will inadvertently result in limiting political participation and even lead to donor harassment. Accordingly, we respectfully urge you to **HOLD** this measure.

¹ 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/>.

² Brad Stone, *Prop 8 Web Site Shows Disclosure Law is 2-Edged Sword*, NEW YORK TIMES, February 7, 2009, available at <https://www.nytimes.com/2009/02/08/business/08stream.html>.