



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

Testimony of
Linda L. Smith
Senior Policy Advisor to the Governor

Before the
HOUSE COMMITTEE ON FINANCE
Friday, February 27, 2009, 4:00 p.m.
Room 308, State Capitol

H.B. 345 RELATING TO CAMPAIGN SPENDING

Chair Oshiro, Vice-Chair Lee, and Members of the Committee:

The administration supports H.B. 345, which would amend Act 244, Session Laws of Hawaii 2008, to delay the commencement of the pilot project for comprehensive public funding of the Hawaii county council elections by moving the start of the project from the general election year 2010 to the general election year 2014.

The Administration would like to highlight that this legislation reaffirms the Administration's position on Act 244 in 2008. The Governor let Act 244 become law without her signature due to several operational concerns, including the negative fiscal implications of fully publicly funded elections (See attached Statement of Concerns). The Governor also noted the potential for publicly financed campaigns to undermine the competitive political process that has guided American politics for the last 200 years. The fact that Act 244 only established a pilot project for a limited period of time was the Act's single saving grace. Additionally, as described in testimony on this bill by the Campaign Finance Commission, serious concerns have arisen regarding the constitutionality of Act 244's equalizing fund provisions under the First Amendment to the United States Constitution.

The funds to finance candidates under this program come from the Hawaii Election Campaign Fund, a state fund whose moneys come primarily from general fund appropriations or from persons who have designated a portion of their income tax liability to the fund as provided in section 235-102.5 (a nominal income tax check-off amount). Given the current fiscal difficulties facing the State as well as the other concerns mentioned, the Legislature, at bare minimum, must postpone the pilot project at this time. For the above stated reasons, the Administration urges this committee to pass H.B. 345.



EXECUTIVE CHAMBERS
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GOVERNOR

July 9, 2008

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

Re: House Bill No. 661 HD1 SD3 CD1

On July 8, 2008, House Bill No. 661, entitled "A Bill for an Act Relating to Campaign Spending" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to establish a pilot project to provide public funding for the county of Hawaii council elections for three election cycles, starting with the 2010 elections.

Because this bill establishes a pilot program for a limited period of time, I am allowing this measure to become law. However, this measure raises a number of operational concerns. The legislation will likely create disparities and funding disadvantages to those seeking to participate in the program. The bill imposes a ceiling of \$300,000 for all participating candidates subject to this pilot program in any given election year. If the pilot project had been in effect for the 2006 election cycle in Hawaii County, a minimum of \$373,276 would have been spent, assuming just one publicly-funded candidate from each of the major political parties ran in each district. In reality, 23 candidates ran for Council offices during that cycle.

The fiscal implications experienced by other states of fully publicly funded elections also raises concerns about the fiscal impact on the Hawaii Election Campaign Fund. The Hawaii State Campaign Spending Commission reports that Massachusetts and Kentucky have terminated their full funding program due to costs. Connecticut reports increases from \$15 million in fiscal year 2006 to a projected cost of \$45 million for fiscal year 2008. The Commission believes that the Hawaii fund would be bankrupt within the first year of a statewide program, and the additional check-off would not generate anywhere near the required funds to maintain a viable program.

Of equal concern are the policy implications of public-financed campaigns since publicly funded campaigns undermine the competitive political process that has guided American politics for 200 years. It is disputable as to whether publicly funded campaigns have increased the number of candidates running for offices, impacted incumbent re-elections, increased voter turnout, ended negative campaigning, or prevented out-of-state money from influencing local campaigns.

The Honorable Colleen Hanabusa, President
and Members of the Senate
July 9, 2008
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For the foregoing reasons, I allowed House Bill No. 661 to become law as Act 244,
effective July 8, 2008, without my signature.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Lingle". The signature is fluid and cursive, with a large initial "L" and a stylized "Lingle".

LINDA LINGLE

BARBARA WONG
EXECUTIVE DIRECTOR



PHONE: (808) 586-0285
FAX: (808) 586-0288
www.hawaii.gov/campaign

STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION
235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

February 27, 2009

TO: The Honorable Marcus R. Oshiro
Chair of the House Finance Committee
The Honorable Marilyn B. Lee
Vice-Chair of the House Finance Committee
Members of the House Finance Committee

FROM: Barbara U. Wong, Executive Director *B. Wong*
Campaign Spending Commission

SUBJECT: Testimony on H.B. No. 345, Relating to Campaign Financing¹

February 27, 2009
4:00 p.m. in Conference Room 308

Chair Oshiro, Vice-Chair Lee, and Members of the House Finance Committee, thank you for the opportunity to testify on this bill.

Act 244, SLH 2008 ("Act 244") established a pilot project for comprehensive public funding program for the county of Hawaii council elections. The pilot project is for a period of three election cycles, and scheduled to begin with the 2010 elections.

H.B. No. 345 proposes to defer the pilot project for three election cycles until the 2014 elections.

- The Campaign Spending Commission ("Commission") is not opposed to this bill, which was not introduced at the Commission's request.
- The Committee may also want to consider removing the equalizing fund provisions in Act 244.

The Commission's staff is well into planning for the start of the pilot project for comprehensive public funding program. Nevertheless, the deferral proposed in H.B. No. 345 would provide additional time for the staff to identify issues and address those issues

¹ This bill was referred to the House Committee on Judiciary (JUD), which passed the bill unamended, and this Committee

There does not appear to be a Senate companion bill.

relating to this new program and focus on other priorities (2010 is a gubernatorial election year).

I. Additional duties resulting from Act 244

The additional duties and responsibilities resulting from the comprehensive public funding program will most likely result in the hiring of new staff to augment the existing staff members who will be responsible for administering the program. Generally, this program will require the development of manuals, forms and procedures; modifying the electronic candidate filing system; training the exiting staff and new staff (if any); and educating candidates.

More specifically, we have identified the following requirements:

1. All qualifying contributions shall be deposited in the Hawaii Election campaign fund. This may result in the preparation and mailing of thousands of receipts.
2. The application for certification must have 200 signatures and addresses which must be reviewed and verified by the County Clerk of Hawaii.
3. The Commission must make a decision to certify within five business days of receiving an application.
4. Seed money is limited to \$3,000. These amounts will have to be tracked.
5. Surplus campaign funds may be used for seed money and limited in-office communications. Other uses are prohibited and separate reports will have to be filed if a candidate has surplus funds. Surplus funds will have to be tracked.
6. The Commission must post on its website, beginning on January 1 in the election year, monthly reports stating, by district the number of declarations of intent to seek public financing received, the number of applications received, the number of candidates certified for public funds, the base amount certified for each candidate, and the amount available for additional certified candidates.
7. Equalizing funds must be disbursed when a nonparticipating candidate's expenditures and independent expenditures supporting the nonparticipating candidate or opposing the certified candidate exceed the base amounts allotted to the participating candidate. The Commission, therefore, would track and investigate all independent expenditures of all committees and individuals that support the nonparticipating candidates.
8. Equalizing funds must be disbursed within 24 hours; the processing must be done immediately without sufficient time to verify information that is provided. This also impacts on the Department of Accounting and General Services, who must disburse the funds.
9. To implement the initial excess report, the Commission will have to develop a new report form and business requirements for modifications to the electronic filing system. When filed, the Commission must review these new reports, send appropriate letters where required, track responses, and investigate for violations.

10. To implement the supplemental excess reports, the Commission will have to develop a new report form for the electronic filing system, review these new reports, send appropriate letters where required, track responses, and investigate for violations.
11. To implement the independent expenditure report, the Commission will have to develop a new report form for the electronic filing system, review these new reports, send appropriate letters where required, track responses, and investigate for violations.
12. To implement the supplemental independent expenditure report, the Commission will have to develop a new report form for the electronic filing system, review these new reports, send appropriate letters where required, track responses, and investigate for violations.
13. Within 24 hours of verifying the failure to file a report, or falsity of report, the Commission shall automatically disburse equalizing funds.
14. The Commission must conduct investigations of failure to file a report and false reports.
15. The Commission should adopt rules to compute the equalizing funds and then compute all funds.
16. The Commission must hire, train and supervise an auditor and systems analyst; create new reports and integrate the reports into the online filing system; and purchase equipment for the new staff members; and locate additional office space.
17. The Commission must hire, train and supervise an employee to administer the public funding program; create an online filing system; and purchase equipment for the administrator.
18. The Commission must create all forms and receipts, create a candidate's guide, and provide training classes.
19. The Commission must establish an independent, nonpartisan review committee for the comprehensive public funding program; and provide administrative and staff support to the committee.
20. The Commission must develop a comprehensive report for the legislature on the comprehensive public funding program.

This point regarding additional duties and responsibilities resulting from a new program is further illustrated by the staff's need to gear up reporting deadlines, training, and changes to the electronic filing system for the special election on April 23, 2009 for the Honolulu City Council, District 3. Planning for this election immediately became a priority, during the midst of the legislative session and other projects.

II. Operation of Act 244

Act 244 entitles a candidate for the county of Hawaii council elections who is "certified" by the Commission to receive:

- The base amount of funds; and
- "Equalizing funds."

The Commission, however, “shall not distribute comprehensive public funding to certified candidates that exceeds the total amount of \$300,000 for all candidates subject to this Act in any given election year in which this Act is operative.”²

Based upon preliminary calculations, the base amount of funds and equalizing funds that would be available to candidates for election to the county of Hawaii council in 2010 (if H.B. No. 345 does not pass) is set forth in the following table:

	Primary base funds	General base funds	Base funds in primary and general	Equalizing Funds in primary and general	Two candidates w/ equalizing funds
District 1	\$7,159	\$788	\$7,947	\$15,894	\$31,788
District 2	\$19,669	\$2,769	\$22,438	\$44,876	\$89,752
District 3	\$23,016	\$546	\$23,562	\$47,124	\$94,248
District 4	\$37,479	\$7,746	\$45,225	\$90,450	\$180,900
District 5	\$9,826	\$6,619	\$16,445	\$32,890	\$65,780
District 6	\$37,795	\$455	\$38,250	\$76,500	\$153,000
District 7	\$14,363	\$6,218	\$20,581	\$41,162	\$82,324
District 8	\$752	\$220	\$972	\$1,944	\$3,888
District 9	\$14,206	\$484	\$14,690	\$29,380	\$58,760
Total	\$164,265	\$25,845	<u>\$190,110</u> (if one candidate in each race in the primary and general election)	\$380,220 (if one candidate in each race in the primary and general election; all candidates receive maximum equalizing funds)	\$760,440 (if two candidates in each race in the primary and general election; all candidates receive maximum equalizing funds)

² Act 244, Section 12 (a).

A. Base amount

The base amount in a contested primary election is the “average of the amount spent by winning candidates in the previous two county council primary elections of the same district, reduced by ten per cent.”

The base amount in a contested general election is the “average of the amount spent by winning candidates in the previous two county council general elections for the same district, reduced by ten per cent.”³

The base amount in an uncontested primary election is “thirty percent of the amount provided in a contested election;” no funding is provided in an uncontested general election.⁴

If “the revenues are insufficient to meet distributions to certified candidates under this section or \$300,000 is distributed, the commission shall permit certified candidates to accept and spend contributions, subject to the campaign contribution limitations set forth in section 11-204, Hawaii Revised Statutes, up to the applicable amounts, including equalizing funds the certified candidate would have received from comprehensive public funding.”⁵

B. Equalizing funds

Equalizing funds “means additional public funds released by the commission to a comprehensive publicly funded candidate to allow the publicly funded candidate to stay financially competitive with a nonparticipating candidate in a contested election and to penalize a nonparticipating candidate for filing false or late reports.”⁶

If a certified candidate is “outspent by an opposing nonparticipating candidate,” the certified candidate may receive equalizing funds up to the base amount allotted to the candidate and subject to the \$300,000 expenditure cap for all candidates. Equalizing funds are available in increments of 25% of the base amount.

A certified candidate is outspent if the base amount is exceeded by the aggregate of the following:

³ Act 244, Section 12(c), (d).

⁴ Act 244, Section 12(e).

⁵ Act 244, Section 12(b).

⁶ Act 244, Section 2.

- The nonparticipating candidate's committee's expenditures or contributions, whichever is greater,
- Added to any independent expenditures made in support of that nonparticipating candidate or against the opposing certified candidate reported by any person,
- Minus any independent expenditures made in support of the certified candidate or against the nonparticipating candidate reported by any person.⁷

In order to determine whether a certified candidate is outspent, Act 244 requires that additional reports not required under the current law be filed by a nonparticipating candidate and any other person making independent expenditures.

- Beginning forty-five days before the primary election day, a nonparticipating candidate shall file an initial excess report with the commission within twenty-four hours after aggregate contributions are received, or expenditures are made in an election that exceeds one hundred one per cent of the base amount of comprehensive public funding allotted to an opposing certified candidate in a contested election. Supplemental excess reports must be filed within twenty-four hours after the nonparticipating candidate's aggregate expenditures exceed \$1,000 since the filing of the prior report.⁸
- Beginning forty-five days before the general election day, noncandidate committees and any other persons that make independent expenditures that expressly advocate the nomination, election, or defeat of a certified candidate shall file the initial independent expenditure report with the commission within twenty four hours after expenditures exceed \$1,000 in aggregate in an election. Supplemental independent expenditure reports must be filed within twenty-four hours after the aggregate expenditures exceed \$1,000 since the filing of the prior report. The independent expenditure reports shall identify the nonparticipating candidate or certified candidate for whom the independent expenditure is intended to influence the nomination, election, or defeat.⁹

If a nonparticipating candidate fails to file a timely initial excess report or supplemental excess report in a contested election or files a false excess report or supplemental excess reports, the commission, within twenty-four hours of verifying the failure or falsity, shall inform the comptroller. The comptroller then must pay to the certified candidate equalizing funds equivalent to the base amount, subject to the \$300,000 expenditure cap.

III. Remove equalizing fund provisions

Notwithstanding the complexities in the law discussed above, the Commission is recommending removal of the equalizing fund provisions based upon In re McComish v.

⁷ Act 244, Section 13(b).

⁸ Act 244, Section 14(a)(1).

⁹ Act 244, Section 14(a)(2).

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Brewer, No. 2:08-cv-1550, Order (Aug. 29, 2008). The Court, therein, determined that Arizona's equalizing fund provision "violates the First Amendment of the U.S. Constitution." A copy of the Order is attached to our testimony. The Commission submits that the Legislature should take proactive action, rather than passively await possible litigation involving equalizing funds.

The foundation for the Order by the McComish Court is the United State Supreme Court's decision in Davis v. Fed. Election Comm., 128 S.Ct. 2759 (2008). Under federal law, candidates for the U.S. House of Representatives are subject to a \$2,300 per election contribution limit, as well as a limit on coordinated party expenditures (i.e., expenditures made by a political party in coordination with the candidate benefiting from the expenditure).

When a candidate for the U.S. House of Representatives spent personal funds in excess of \$350,000, as explained by the Davis Court, "a new, asymmetrical regulatory scheme [came] into play." The self-financing candidate remained subject to the original \$2,300 contribution limit and coordinated spending limit, while a non-self-financing opponent was permitted to receive contributions up to treble the original limit (i.e., \$6,900 rather than \$2,300) and the coordinated party spending limit was eliminated. The Court found that the asymmetry of this arrangement "impermissibly burden[ed] [the plaintiff's] First amendment right to spend his own money for campaign speech." Davis at 2771.

Attachment (Order, In re McComish v. Brewer, No. 2:08-cv-1550)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

John McComish, et al.,
Plaintiffs,
vs.
Jan Brewer, et al.,
Defendants.

No. CV-08-1550-PHX-ROS
ORDER

Before the Court is Plaintiffs' Motion for a Temporary Restraining Order ("TRO") (Doc. 13). Plaintiffs seek to enjoin enforcement of the matching funds provisions of Arizona's Clean Elections Act, A.R.S. § 16-952 (A), (B) and (C), asserting that these provisions impermissibly burden their First Amendment rights to freedom of speech.

For the reasons below, Plaintiffs' requested relief will be denied.

BACKGROUND

The Arizona Clean Elections Act (the "Act" or "Arizona Act") was approved by Arizona voters in 1998. The Act sets up a voluntary system of campaign financing in which candidates who choose to be "participating candidates" may receive funds from the Citizens Clean Elections Fund ("CCEF"). Participating candidates are limited in the campaign contributions they may receive and personal expenditures they may make. In return, they

1 receive campaign funds from the CCEF in a set amount.¹ See A.R.S. §§ 16-941, -945; see
2 also, Citizen Clean Elections Commission, "Voter Education Guide" (2008) available at
3 [http://www.ccec.state.az.us/ccecweb/ccecays/ccecPDF.asp?docPath=docs/2008PrimaryC](http://www.ccec.state.az.us/ccecweb/ccecays/ccecPDF.asp?docPath=docs/2008PrimaryCandidateStatementPamphlet.pdf)
4 [andidateStatementPamphlet.pdf](http://www.ccec.state.az.us/ccecweb/ccecays/ccecPDF.asp?docPath=docs/2008PrimaryCandidateStatementPamphlet.pdf) (hereafter "Voter's Guide").

5 When participating candidates have opponents who are non-participating –
6 "traditional candidates" – they can also receive matching funds. Once a traditional candidate
7 exceeds the spending limit for a given race, her participating opponent or opponents will
8 receive dollar-for-dollar matching funds from the CCEF. These funds cap out at three times
9 the applicable spending limit.² Independent expenditures by Political Action Committees
10 ("PACs") made on behalf of a traditional candidate or in opposition to her participating
11 opponent also count towards the spending limit.

12 Plaintiffs here are non-participating candidates. Plaintiff John McComish is the
13 current Arizona State House of Representatives Majority Whip, currently running for re-
14 election. Plaintiff Nancy McLain is a current member of the Arizona State House of
15 Representatives, currently running for re-election. Plaintiffs Doug Sposito, Frank Antenori,
16 and Tony Bouie are candidates for the Arizona State House of Representatives. Plaintiff
17 Kevin Gibbons is a candidate for the Arizona State Senate. Gibbons, Sposito, and Bouie
18 have recently triggered matching funds to their opposing "participating" candidates by
19 making direct expenditures to their campaign. See Gibbons Aff., ¶ 12, Ex. A.1; Bouie Aff.,
20 ¶ 9, Ex. B.1; Sposito Aff., ¶ 11, Ex. C.1.. Further, all three report that their campaign

21
22 ¹ For candidates for the state legislature, primary spending limits are \$12,921 and
23 general election spending limits are \$19,382. Legislative candidates may collect up to
24 \$3,230 in individual early contributions of no more than \$130 during the exploratory and
25 qualifying periods, and may use \$610 of personal monies for their campaigns. For
26 candidates for Corporation Commission, the primary spending limit is \$82,680 and the
27 general election spending limit, \$124,020. Candidates may collect up to \$12,920 in early
28 contributions of no more than \$130 and contribute \$1,230 of their personal monies. See
A.R.S. § 16-951; Voter's Guide.

27 ² The matching funds are a dollar-for-dollar match minus 6% meant to compensate
28 for the fundraising expenses incurred by traditional candidates. A.R.S. § 16-952(A).

1 expenditures have been chilled because of the possibility of triggering further matching funds
2 to their opponents, making them reluctant to spend money they would otherwise have used
3 to fund campaign activities. See Sposito Aff., ¶ 12; Gibbons Aff., ¶ 10-11; Bouie Aff., ¶ 8-
4 10.

5 The Act's provision can be manipulated in a number of ways. Because PACs may
6 make expenditures on behalf of traditional candidates without their consent or even their
7 knowledge, they may air ineffective - even deliberately ineffective - advertising that then
8 triggers matching funds that participating opponents can use at their discretion. The
9 occurrence of this was alluded to at the hearing for a TRO. Similarly, candidates may use a
10 "slate" strategy against their opponents. Bouie provides an illustrative example arising out
11 of his district where a traditional incumbent, Representative Sam Crump, and a participating
12 challenger, Carl Seel, running in his district (where two seats are available) have emerged as
13 a "slate," sharing joint advertising. Bouie Aff., ¶ 21-23, Ex. B.2. Thus, money spent by
14 Crump generates matching funds for Seel, effectively aiding both candidates.

15 ANALYSIS

16 I. Standard

17 The standard for issuing a Temporary Restraining Order ("TRO") is the same as that
18 for issuing a preliminary injunction. Gonzalez v. State, 435 F. Supp. 2d 997, 999 (D. Ariz.
19 2006). In the Ninth Circuit, there are two sets of criteria for a court to use when evaluating
20 a request for a TRO. First, a plaintiff must show:

- 21 (1) a strong likelihood of success on the merits,
- 22 (2) the possibility of irreparable injury to plaintiff if preliminary relief
is not granted,
- 23 (3) a balance of hardships favoring the plaintiff, and
- (4) advancement of the public interest (in certain cases).

24 Earth Island Inst. v. U.S. Forest Serv., 351 F.3d 1291 (9th Cir. 2003) (quoting Johnson v. Cal.
25 State Bd. Of Accountancy, 72 F.3d 1427, 1430 (9th Cir. 1995). Alternately, a plaintiff may
26 "demonstrate[] 'either a combination of probable success on the merits and the possibility of
27 irreparable injury or that serious questions are raised and the balance of hardships tips sharply
28 in his favor'" Id. These two tests represent a continuum; "[t]hus, the greater the relative

1 hardship to [Plaintiffs] the less probability of success must be shown.” Earth Island, 351 F.3d
2 at 1298.

3 **II. Application**

4 a. Likelihood of Success on the Merits.

5 The history of campaign finance jurisprudence is extensive and convoluted. In
6 Buckley v. Valeo, 424 U.S. 1 (1976), the Supreme Court rejected a cap on expenditures by
7 candidates of their personal funds. The Court explained that a “candidate . . . has a First
8 Amendment right to engage in the discussion of public issues and vigorously and tirelessly
9 to advocate his own election,” and that a cap on personal expenditures by a candidate
10 constitutes “a substantial,” “clea[r],” and “direc[t] restraint on that right.” Id. at 52. Thus,
11 while states may place certain reasonable limits on campaign *contributions*, personal
12 expenditures may not be restrained. Id. at 21-22, 51.

13 Less clear, however, has been the fate of statutes like Arizona’s which, rather than
14 placing a direct cap on personal expenditures, instead create a system that incentivizes – or,
15 perhaps, coerces – candidates to opt into a public financing program that includes limits on
16 contributions *and* personal expenditures. Several circuits have considered this variation to
17 the statute in Buckley. The First, Fourth and Sixth Circuits have ruled such schemes
18 constitutional. In N.C. Right to Life, Inc. v. Leake, 524 F.3d 427 (4th Cir. 2008), the court
19 held an act similar to Arizona’s was constitutional. “The plaintiffs remain free to raise and
20 spend as much money, and engage in as much political speech, as they desire,” wrote the
21 court. “They will not be jailed, fined, or censured if they exceed the trigger amounts.”
22 Similarly, the First Circuit, in Daggett v. Comm’n on Governmental Ethics & Election
23 Practices, 205 F.3d 445 (1st Cir. 2000), held that Maine’s matching fund provision was
24 constitutional, writing that “[t]he public funding system in no way limits the quantity of
25 speech one can engage in or the amount of money one can spend engaging in political speech,
26 nor does it threaten censure or penalty for such expenditures.” Id. at 464; see also Gable v.
27 Patton, 142 F.3d 940 (6th Cir. 1998) (holding that a Kentucky campaign finance law which
28

1 lifted expenditure limits for participating candidates when non-participating candidates
2 exceeded those limits was constitutional).

3 Of the circuits that have considered the question, only the Eighth Circuit has found
4 matching fund provisions like those in the Arizona Act to be unconstitutional. In Day v.
5 Holahan, 34 F.3d 1356 (8th Cir. 1994), a Minnesota law provided that candidates would
6 receive one half the amount of independent expenditures made by opposing candidates. The
7 court emphasized the “‘self-censorship’ that has occurred even before the state implements
8 the statute’s mandates,” “no less a burden on speech that is susceptible to constitutional
9 challenge than is direct government censorship.” Id. at 1360. The court also found that the
10 speech restriction could not be considered content neutral; “[i]ndependent expenditures of any
11 other nature, supporting the expression of any sentiment other than advocating the defeat of
12 one candidate or the election of another, do not trigger the statute’s . . . provisions.” Id. at
13 1361. There was, however, one substantial difference between the statute at issue in Day and
14 the Arizona Act. In Minnesota, the participation rate among candidates was approaching
15 100% (in Arizona, it is closer to 60%), leading the court to declare that “no interest, no matter
16 how compelling, could be served” by the restrictions on the remaining candidates. Id.

17 For all that these cases have long muddied the matching funds landscape, a recent
18 Supreme Court decision sheds light upon the issue. In Davis v. Fed. Election Comm’n., 128
19 S. Ct. 2759 (2008), the Court quoted from Day extensively and affirmatively, while ignoring
20 the conflicting opinions entirely. See id. at 2772. Ultimately, the Court found that provisions
21 of the Bipartisan Campaign Reform Act of 2002 (“BCRA”) – the so-called Millionaire’s
22 Amendment – violated the Constitution’s First Amendment free speech protections. 2 U.S.C.
23 §441a-1(a); id. at 2774. The Millionaire’s Amendment was triggered when a non-
24 participating candidate’s personal expenditures caused her total campaign expenditures to
25 exceed \$350,000. At that point, an opposing participating candidate was allowed to receive
26 individual contributions at three times the normal limit (the limit for non-participating
27 candidates remained the same), and could accept coordinated party expenditures without limit.
28 Id. at 2766. The Court found that the asymmetry of this arrangement “impermissibly

1 burden[ed] [the plaintiff's] First Amendment right to spend his own money for campaign
2 speech." Id. at 2771. Thus, although under the BCRA candidates can choose to spend their
3 own money as desired, they "must shoulder a special and potentially significant burden if they
4 make that choice." Davis, 128 S.Ct. at 2771.

5 Because the BCRA "impose[d] a substantial burden on the exercise of the First
6 Amendment right to use personal funds for campaign speech, the provision [could] not stand
7 unless it [was] 'justified by a compelling state interest.'" Id. at 2772. The Court found that
8 the government's stated interest of "level[ing] electoral opportunities for candidates of
9 different personal wealth" was not a compelling state interest. Id. at 2773. "[P]reventing
10 corruption or the appearance of corruption" *are* legitimate. Id. However, it did not find that
11 the BCRA was justified by such an interest; "reliance on personal funds *reduces* the threat of
12 corruption, and therefore [the challenged provision], by discouraging use of personal funds,
13 disserves the anticorruption interest." Id. (emphasis in original).

14 The law at issue in Davis differs from the Arizona Act in that the latter does not
15 inequitably raise the contributions limit, instead providing matching funds from the CCEF.
16 The Defendants point to this in their brief, quoting the Supreme Court's statement that "we
17 have never upheld the constitutionality of a law that imposes different contribution limits for
18 candidates who are competing against each other" Id. Thus, Defendants argue, "[t]he
19 Act here imposes no asymmetrical burden on a traditional candidate's ability to contribute or
20 expend his or her own money."

21 However, the Davis court focuses not merely on the fact that the contributions limit
22 differs for participating and non-participating candidates, but also forcefully on the fact that
23 "the vigorous exercise of the right to use personal funds to finance campaign speech produces
24 fundraising advantages for opponents in the competitive context of electoral politics." Id. at
25 2772. Likewise, the Supreme Court has held (in a passage quoted approvingly in Davis) that,
26 while one does not "have the right to be free from vigorous debate, one *does* have the right
27 to be free from government restrictions that abridge its own rights in order to 'enhance the
28 relative voice' of its opponents." Pacific Gas & Elec. Co. v. Pub. Utilities Comm'n., 475 U.S.

1 1, 14 (1986) (emphasis in original). The “statutorily imposed choice” provided by the BCRA
2 was not sufficient to save its constitutionality. Davis, 128 S. Ct. at 2772. Though the Arizona
3 Act’s mechanism for funding differs, the effect, which forces a candidate to choose to “abide
4 by a limit on personal expenditures” or else endure a burden placed on that right, is
5 substantially the same. Id.

6 It is in the presence of a compelling state interest that the Arizona Act has the potential
7 to most sharply distinguish itself from the BCRA. The Arizona Act perhaps better serves the
8 interest of discouraging corruption; it provides matching funds for – and thus discourages –
9 private contribution. However, as Plaintiffs point out, the Act opens up new avenues for
10 possible corruption. Because matching funds will be provided to participating candidates for
11 expenditures that PACs make on behalf of traditional candidates, PACs can run ineffective,
12 unwished for advertising that generates funds for the participating candidate to use at her
13 discretion. The Act also allows the unofficial “slate” strategy seen in Bouie’s race, which
14 allows traditional candidates to trigger matching funds that will be used partially in their own
15 support. The possibility of such gamesmanship mitigates against any decrease in corruption
16 or in the appearance of corruption. The Arizona Act cannot be found to serve this interest any
17 more narrowly than did the BCRA.

18 Accordingly, Plaintiffs have established that the Matching Funds provision of the Act
19 violates the First Amendment of the U.S. Constitution.

20 b. Irreparable Injury

21 Plaintiffs can be said to suffer irreparable injury both through the dispensation of funds
22 that will be used to oppose them and through the mere fact that their speech is being burdened.
23 The Supreme Court has held that “[t]he loss of First Amendment freedoms, for even minimal
24 periods of time, unquestionably constitutes irreparable injury.” Elrod v. Burns, 427 U.S. 347,
25 373 (1976).

26 c. Balance of Harms and the Public Interest

27 The balance of harms at issue is not a simple one. On the one hand, Plaintiffs suffer
28 a burden on their First Amendment rights and have proffered some evidence that the

1 candidates opposing them benefit directly from that opposition. On the other hand, the State
2 Defendants have a clear interest in running a smooth and orderly election which, in this case,
3 includes a significant number of candidates who have been operating under the assumption
4 that matching funds would be distributed and planning their campaign strategies accordingly.
5 Those disadvantaged candidates are not currently parties to this litigation, but disrupting their
6 expectations of funding shortly before an election surely interferes with the State's interest
7 in holding a fair, contested election. Furthermore, courts have traditionally treated injunctions
8 in election cases differently than in other contexts, as "[i]n this case, hardship falls not only
9 upon the putative defendant" but on all citizens of the state. Southwest Voter Registration
10 Educ. Project v. Shelley, 344 F.3d 914, 919 (9th Cir. 2003). Certainly the fair nature of this
11 election has been tainted by the constitutional violations with which it is entwined. However,
12 as Defendants point out, "[c]hanging the rule now would irreparably harm the candidates who
13 in good faith chose to accept public funding by participating in Arizona's Clean Elections
14 program." Defendants provide affidavits from at least two candidates who state that they are
15 relying on matching funds to run an effective campaign. Kelty Aff., ¶ 3-4; Valdez Aff., ¶ 4.

16 And the length of time Plaintiffs waited to file their TRO also weighs in the balance
17 against the Plaintiffs on the public interest determination. Candidates began qualifying for
18 clean elections funding after January 1, 2008, candidates were required to file nomination
19 papers by June 4, 2008, and Davis was decided on June 27, 2008. While it appears Plaintiffs'
20 counsel acted quickly upon learning of the case, the fact remains that Plaintiffs filed their
21 complaint on August 21, 2008 and their Motion for Temporary Restraining Order was filed
22 five days later on August 26, 2008. An Oregon district court decision noted the "eleventh-
23 hour" nature of a challenge in denying a TRO in an election case as bearing against the public
24 interest. Grudzinski v. Bradbury, 2007 WL 2733826, at *3 (D. Or. Sept. 12, 2007). Further
25 the case law discussed previously addressing matching funds were not resolved in the context
26 of a TRO or preliminary injunction..

27 The tardiness of the challenge has inhibited a thorough determination of the harms on
28 each side. In order to accurately assess the balance of the harms, Plaintiffs need to present

1 further evidence of harm done to them through expenditures of matching funds *at this late*
2 *stage of the election*. Defendants, similarly, need adequate time to develop and present
3 evidence as to the disruptive effect enjoining matching funds will have at this stage of the
4 election.

5 **CONCLUSION**

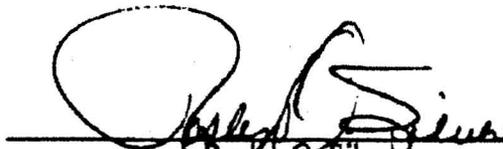
6 Plaintiffs have shown success on the merits. However, given the special nature of an
7 election and the seriousness of enjoining a critical facet of it at this stage in time, Plaintiffs
8 have not shown that the balance of harms tilts in their favor.

9 Accordingly,

10 **IT IS ORDERED** Plaintiffs' Motion for a Temporary Restraining Order shall be
11 **DENIED**.

12 **IT IS FURTHER ORDERED** a hearing will be held on September 3, 2008, 1:30 p.m.
13 to determine whether a preliminary injunction should be granted or, should the parties decide
14 that discovery is necessary, the preliminary injunction hearing will be continued and a status
15 hearing will be held in its place.

16 DATED this 29th day of August, 2008.

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21 Roslyn O. Silver
22 United States District Judge
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28

I am also very concerned about the fiscal implications of Act 244, Session Laws of Hawai'i 2008. Massachusetts and Kentucky have terminated full funding for their programs due to increased costs. The Hawai'i Campaign Spending Commission has stated that the Hawai'i fund would be bankrupt within the first year of a statewide program. Another concern is the potential for misuse of public funds. Emilie Boyles, a candidate for Portland's City Commission, was accused of improperly using public funds to pay her 16-year-old daughter \$12,500 for campaign work (see the April 9, 2008 edition of the Seattle Weekly). In Arizona, a couple of college students qualified for public financing, then spent the money on extravagant parties and bar tabs (see the July 3, 2005 edition of the Scottsdale Tribune). Of course, misuse of public funds is punishable, but how to determine legitimate campaign expenditures for public money versus privately raised donations is not clear and may, unfortunately, lead to making criminals out of candidates.

If this pilot project is not delayed, it will very likely create disparities and funding disadvantages to those seeking to participate in the program. If the program were to take effect for the 2010 election cycle, a candidate for Council District 8 would have considerably fewer dollars available to them than a candidate running for Council District 6. Furthermore, if revenues are insufficient to meet distributions to all candidates, which is very likely, the resulting adaptation to the program is problematic.

It is also disputable as to whether public-financed campaigns have increased the number of candidates running for offices, impacted incumbent re-elections, increased voter turnout, or prevented out-of-state money from influencing local campaigns. A study of the Arizona publicly funded elections system by Allison Hayward, ("Campaign Promises: A Six-Year Review of Arizona's Experiment with Taxpayer-Funded Campaigns," 2006) concluded that the Arizona system actually reduced participation and confidence in government. According to that report, the number of primary candidates for office has decreased, the law has not increased minor or third-party participation, and incumbency reelection rates have not changed. A University of Missouri study ("Campaign Finance Laws and Political Efficacy: Evidence from the States," 2005) also concluded that public funding laws can have a statistically negative effect on public views of whether people have a say in their government.

Thank you for the opportunity to testify in support of House Bill No. 345.

KENNETH GOODENOW
County Clerk



OFFICE OF THE COUNTY CLERK

Elections Division
County of Hawaii
Hawaii County Building
25 Aupuni Street
Hilo, Hawaii 96720

TESTIMONY OF KENNETH GOODENOW,
COUNTY CLERK, COUNTY OF HAWAI'I,
TO THE HOUSE FINANCE COMMITTEE
ON HOUSE BILL NO. 345
RELATING TO CAMPAIGN SPENDING

February 27, 2009 – 4:00 o'clock p.m.

Chair Oshiro, Vice-Chair Lee, and members of the House Finance Committee, thank you for the opportunity to testify in support of House Bill No. 345.

The purpose of House Bill No. 345 is to delay the applicability of Act 244, Session Laws of Hawai'i 2008 (a pilot project for publicly funded campaigns for Hawai'i County Council) to the 2014, 2016, and 2018 general election years.

According to Section 8 of Act 244, the Hawai'i County Clerk will be responsible for verifying that at least two hundred signatures and qualifying contributions were received by each participating candidate from registered voters in the district for which the particular candidate seeks office. Even if there are only two participating candidates per district, verifying such a number of signatures without the aid of social security numbers or dates of birth is not possible without increased funding for the Hawai'i County Office of Elections.

In order to verify signatures in a timely fashion, more employees will certainly be needed. For example, the most recent petition for initiative by ordinance had 4,954 signatures. It took approximately twelve employees twenty days from approximately 7:45 a.m. to 11:00 p.m. each day to verify that 2,214 signatures were those of registered county voters. Fortunately, the petition was not received in such a busy period as would verification of the signatures at issue in Act 244. Absentee ballot registration, precinct training, and other election responsibilities will be going full swing when signatures may be submitted for verification. I humbly submit to the House Finance Committee that this increase in service rises to a level envisioned by the framers of Article VIII, Section 5, of our Hawai'i State Constitution.

Thank you for the opportunity to testify in support to House Bill No. 345.



Conservation Council for Hawai'i

Testimony Submitted to the House Committee on Finance

Hearing: Friday, February 27, 2009

4:00 pm

Room 308

Opposition to HB 345 Relating to Campaign Spending

Aloha. My name is Marjorie Ziegler, and I am testifying on behalf of the Conservation Council for Hawai'i and its 6,000 members in opposition to HB 345, which would delay comprehensive public funding for Hawai'i county council elections until the general election year 2014. We do not see the need to delay this pilot project and feel this bill is not in the public interest. Please hold this bill in committee and allow publicly financed campaigns to begin on the Big Island for county council races.

Mahalo for the opportunity to testify.



Working Today for the Nature of Tomorrow!

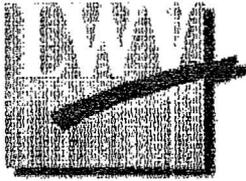
Telephone/Fax 808.593.0255 • email: info@conservehi.org • web: www.conservehi.org

P.O. Box 2923 • Honolulu, HI 96802 • Office: 250 Ward Ave., Suite 212 • Honolulu, HI 96814

Hawai'i Affiliate of the National Wildlife Federation

President: Julie Leialoha • Vice President: Nelson Ho • Secretary: Douglas Lamerson • Treasurer: Kim Ramos

Directors: Maura O'Connor • Melora Purell • George Robertson • Executive Director: Marjorie Ziegler



THE LEAGUE OF WOMEN VOTERS OF HAWAII

TESTIMONY ON HB 345 RELATING TO CAMPAIGN SPENDING

Committee on Finance
Friday, February 27, 2009
4:00 p.m.
Conference Room 308

Testifier: Jean Aoki, LWV Legislative Liaison

Chair Oshiro, Vice Chair Lee, members of the Committee on Finance,

The League of Women Voters of Hawaii strongly opposes HB 345 which would postpone the commencement of the pilot project for comprehensive public funding of Hawaii County Council elections from 2010 to 2014

Increasingly, states and counties nation-wide, and even national leaders in Congress, the media, and non-profit organizations have come out in support of public funding for election campaigns, in part to stem the ever-escalating cost of elections which discourage too many well-qualified people from running for office. Also an issue, is the part that huge donations to election campaigns play in the establishment of public policies. In the past presidential election, while many more small donors gave contributions to the major candidates, large donors' contributions were a huge part of total campaign funds raised, which many feel make it more difficult to reform health care, for example. The pharmaceutical and health care industries are major players in campaign funding.

The public funding of election campaigns is meant to address those two huge problems and more. The part of comprehensive public funding which is meant to help participating candidates run competitive races is the provision of equalizing funds. If an opponent(s) spend a great deal more than the participating candidate, the program would give candidates more money up to double the initial grant. This is a necessary part of public-funding if we are to keep the initial grants and spending limits low to attempt to stop the escalation of campaign costs. At the same time, we need to make sure that publicly-funded candidates have a chance at running competitive campaigns. We feel that providing up to double the initial grant **if necessary** will suffice. This is one piece of the program that the pilot program will test.

An interesting report from the Center for Governmental Studies discusses Florida's public campaign finance program which the report says is in need of reform. Their program only covers eligible candidates for governor, lieutenant governor and candidates for state cabinet posts. One of the things the report recommends is the lowering of the expenditure limits which is currently at \$20 million for candidates for governor and lieutenant governor and \$10 million for candidates for cabinet level posts to one-third of the current amounts. (The expenditure limits are the amounts provided to these candidates to run their campaigns.) Another recommendation is that Florida provide these candidates with "rescue funds" the equivalent of our "equalizing funds".

Our pilot program exemplifies the advice given of starting low and providing more only when needed.

No good reasons are given for postponing the pilot project to commence in 2014. HB 345 promises a very modest pilot program, limited to council races in one county. The information gathered in the three election cycles with improvements made to address whatever weaknesses we see, will give us the bases for a thorough evaluation of the comprehensive public funding program.

In light of the lack of convincing reasons for postponing this pilot program, we ask that this bill be held in committee.

Thank you for this opportunity to testify in opposition to HB 345.



HAWAII COUNTY
P.O. BOX 665, Hilo, HI 96721

Rep. Marcus Oshiro, Chair
Rep. Marilyn Lee, Vice Chair
Members of Committee on Finance

Testimony In opposition to HB345

Friday, February 27, 2009 4:00 pm, Conference Room 308, State Capitol

From Susan Irvine for League of Women Voters of Hawaii County

I am writing in opposition to HB345 which proposes to delay implementation of Act 244 - the public funding option for the Big Island Council elections. This bill is unfortunate as it seems it is a disservice to those who originally enacted Act 244 and to the constituents who supported their votes.

In other jurisdictions, adequate public funding has proven beneficial to politicians who no longer need to expend most of their energy raising campaign dollars, and to the public who gain increased respect and confidence in elected officials. Young citizens who have recently shown signs of re-energizing our political process will fall back into cynicism and apathy unless we show them government can be run in a transparent, citizen-centered manner.

Working to limit the power of money in campaigns does not jeopardize the reelection of capable incumbents. Senator Les Ihara has done very well while voluntarily limiting campaign donations in the past.

Please oppose this unfortunate bill. Thank you

Susan Irvine, League of Women Voters of Hawaii County



AMERICANS FOR DEMOCRATIC ACTION

OFFICERS	DIRECTORS			MAILING ADDRESS
Brien Hallet, President	Juliet Begley	Nancy Bey Little	Barbara Polk	PO. Box 61792
Karin Gill., Vice-President	John Bickel	Jan Lubin	George Simson	Honolulu,
Fritz Fritschel, Treasurer	Carolyn Golojuch	Stephen O'Harrow		Hawai'i 96822
Tom Horton, Secretary	Chuck Huxel	Jim Olson	Bart Dame (Alt)	

February 25, 2009

TO: Chair Marcus Oshiro, Vice Chair Marilyn Lee
Members of the House Finance Committee

FROM: Barbara Polk, Legislative Committee Chair
Americans for Democratic Action, Hawaii Chapter

SUBJECT: OPPOSITION TO HB 345

Americans for Democratic Action, Hawaii Chapter, strongly opposes HB 345, which attempts to delay publicly financed elections for the Hawaii County Council. The bill approving the test of public financing, at the request of the Hawaii County Council and with broad public support, was passed only last year. There is no reason to delay its implementation.

In States and communities where public financing is available to candidates, the result has been a broader representation of the public among political candidates, greater trust in government, and more active citizen participation—in other words, increased democracy. Public financing of election campaigns, on a voluntary basis, can go far to restore faith in our democracy in the State of Hawaii. To delay implementation is to delay these important advantages.

We strongly urge you to defeat this attempt to delay this important program. Thank you for the opportunity to testify.

To: Representative Marcus Oshiro, Chair
Representative Marilyn Lee, Vice Chair
House Committee on Finance

From: Seth Corpuz-Lahne
103A Prospect St.
Honolulu, HI 96813

RE: Strong Opposition HB 345, Relating to Campaign Spending

Hearing: Friday February 27, 2009
Conference Room 308
4:00 PM

Chair Oshiro, Vice-Chair Lee, members of the House Finance Committee, thank you for this opportunity to testify in strong opposition to HB 345. Last year the Legislature passed comprehensive public financing as a pilot project for the Hawaii County Council elections. This was supported by a resolution from the Hawaii County Council asking for the same. Now this bill proposes to push the starting date of the pilot project back. For years advocates for comprehensive public financing pushed first for statewide implementation, then gradually scaled back their goals because of apprehension from people who were used to the traditional campaign financing system. There is money in the campaign fund, that can't be tapped to help our present dire budget situation, and it is precisely for funding this sort of initiative. Don't delay implementation of the pilot project, too many people have worked long and hard to get just this small chance to make a change. Please hold this bill so that comprehensive public financing for elections can proceed on schedule. Mahalo.

TESTIMONY OF AARON CHUNG

HOUSE COMMITTEE ON FINANCE
HEARING DATE: FRIDAY, FEBRUARY 27, 2009

SUPPORT OF HB 345, RELATING TO CAMPAIGN SPENDING

Chair Oshiro and Members of the House Committee on Judiciary,

Thank you for allowing me the opportunity of weighing in on HB 345, relating to campaign spending, which seeks to amend the pilot project for comprehensive public funding of Hawaii county council elections, created last year by Act 244, by moving the commencement date of such project to the election year 2014 instead of 2010. I applaud the Legislature for revisiting the matter and proposing to delay its implementation. In that sense, I suppose that you could say for the record that I support the bill. Still, in my opinion, and because the underlying Act has caused me many sleepless nights since its enactment, the bill does not go far enough. I believe that Act 244 should be repealed.

First off, let me say that I am not submitting this testimony at anyone's request, nor do I stand to benefit in any way from the passage or defeat of the instant measure. My only interest in this matter is that of a very concerned citizen and as stated above, I have been troubled over this pilot project for many months now. As a retired four-term Hawaii County Council member, I take special, albeit sometimes passing, interest in issues regarding campaign reform and those affecting the Big Island. In one fell swoop, Act 244 caused those two areas of interest to collide. I confess to not knowing the precise aspects of the pilot project as everything that I know of Act 244 has come from reading the local newspaper. Based on what limited information I do have, though, I object to the implementation of Act 244 on several levels.

1. The electoral process is the foundation upon which our entire democratic system of government is built. Everything that we stand for as a nation is predicated on the integrity of that process. Act 244, which creates a separate set of rules for one county and one type of race is in essence a special law. We all know that such laws are suspect. Still, at all levels of government, we see fit to take license in enacting such laws from time to time. I can

accept that. What I cannot accept, is a special law which cuts through the very fabric from which this country is woven. All laws pertaining to elections falling under the jurisdiction of the State of Hawaii should be consistent and made applicable across the board.

2. I like to think that a candidate's ability to raise campaign funds is a function of the time and effort that person has invested into the community, and that generally speaking, and under those circumstances, the persons who contribute or who are asked to contribute to a particular candidate's campaign are a reflection of the type of leadership that is being promised. Regardless of what philosophies they may espouse, these candidates are the serious ones, those willing to work hard for the purpose of getting their message across. Act 244 sets up a system whereby those who have little or no financial, personal or community investment, can reap all of the rewards of hard working, heavily invested individuals. The potential for abuse is enormous and obvious. However, of greater concern is the invasion of the welfare mentality into the electoral process. Being a Democrat, I must admit to having some socialist tendencies. However, the free-money, riding-on-the-coattails-of-others policy advanced by Act 244 is too much for even my tastes. Not only does it provide a disincentive to hard work (a candidate's hard work can reasonably be expected to come back to work against him or her), but worse still, it provides an incentive to do things illegally.

3. Act 244 creates a system that is blatantly unfair. Imagine for one second the likely situation of having nine council races, each with a widely varying range of public funding resources. The incumbent candidate who ran unopposed during the election immediately prior to the commencement of the pilot project would face less resistance and therefore have an easier ride into re-election than his or her first-term colleague who needed to raise money during that person's first election in order to wage a viable campaign. I just read an article in today's Hawaii Tribune Herald which included the following excerpt:

"Shawn James Leavey, who advocated for publicly funded campaigns when he was a student at the University of Hawaii at Hilo and a writer for Big Island Weekly, said

lawmakers saw the pilot program as "anti-incumbent legislation".

Contrary to the assertions made by Mr. Leavey, the pilot program is actually a pro-incumbent measure and anyone with any practical experience in the area of campaigning would be able to instantly recognize that fact.

4. If the system created under Act 244 is indeed a pilot project, there must be some objective measures in order to judge the efficacy thereof and the social policy it is intended to advance. If there are no such measures, there can be no legitimate justification for such project to exist. Assuming, however, that Act 244 includes such measures and assuming even further that the pilot project is subsequently deemed a success based on such measures, what then? Will this Legislature be prepared to devote the necessary resources to implement a similar type of system for all of the county council races throughout the State? Better yet, would it be inclined to adopt that approach for all races within its jurisdiction? If the answer is "no" to either one of these questions, in other words if there is no clear resolve for follow-through, then one has to question the underlying need for this pilot project.

Please consider repealing Act 244. Thank you for considering my thoughts on this matter.

FINTestimony

From: William Bailey [shanti108@hawaii.rr.com]
Sent: Thursday, February 26, 2009 10:00 AM
To: Rep. Marcus Oshiro; Rep. Marilyn Lee; FINTestimony
Subject: Strong opposition to HB 345 -- Delaying Fair Elections Bill

Marcus R. Oshiro
Marilyn B. Lee
Committee on Finance

William Bailey
shanti108@hawaii.rr.com
2161 Puna St
Honolulu, HI 96817

Friday, February 27, 2009 04:00 PM

Strong opposition to HB 345 -- Delaying Fair Elections Bill

I strongly oppose HB 345. Every election cycle brings higher campaign costs. It is past time for Hawai'i to implement fair elections, as has been done successfully in other states and municipalities. Fair elections delayed is fair elections denied. There is no need to delay Act 244; it is a very modest beginning, and we need to start now!

Please defeat HB 345. Mahalo.

FINTestimony

From: Scott Foster [fosters005@hawaii.rr.com]
Sent: Wednesday, February 25, 2009 2:12 PM
To: Rep. Marcus Oshiro; Rep. Marilyn Lee; FINTestimony
Subject: Strong opposition to HB 345 -- Delaying Fair Elections Bill

Marcus R. Oshiro
Marilyn B. Lee
Committee on Finance

Scott Foster
fosters005@hawaii.rr.com
3050 Kahaloa Place
Honolulu, HI 96822

Friday, February 27, 2009 04:00 PM

Strong opposition to HB 345 -- Delaying Fair Elections Bill

I'm writing in opposition to this bill. I support a public funding option for elections because it's the only way to change the existing broken system which you good folks are forced to use to run for office. Mahalo for your kokua. - Scott Foster

FINTestimony

From: Johnson Landin [landinj@gmail.com]
Sent: Wednesday, February 25, 2009 6:32 PM
To: Rep. Marcus Oshiro; Rep. Marilyn Lee; FINTestimony
Subject: Strong opposition to HB 345 -- Delaying Fair Elections Bill

Marcus R. Oshiro
Marilyn B. Lee
Committee on Finance

Johnson Landin
landinj@gmail.com
P.O. Box 23112
Honolulu, HI 96823

Friday, February 27, 2009 04:00 PM

Strong opposition to HB 345 -- Delaying Fair Elections Bill

I am writing in opposition to this bill. I support a public funding option for elections because it is critical that we level the playing field for all citizens with a passion for public service. Public funding will allow elected officials to spend their time on important issues and not "dialing for dollars" and worrying about funding for their next election. It is imperative that we start a reform of our political system to enable elected offices the viable option of being beholden not to any campaign contributors, but only to their constituency. Please, do not delay the implementation of this program.

Respectfully submitted,
Landin Johnson

FINTestimony

From: Mary Spadaro [mlspadaro@yahoo.com]
Sent: Wednesday, February 25, 2009 5:31 PM
To: Rep. Marcus Oshiro; Rep. Marilyn Lee; FINTestimony
Subject: Strong opposition to HB 345 -- Delaying Fair Elections Bill

Marcus R. Oshiro
Marilyn B. Lee
Committee on Finance

Mary Spadaro
mlspadaro@yahoo.com
980 Prospect St. #2
Honolulu, HI 96822

Friday, February 27, 2009 04:00 PM

Strong opposition to HB 345 -- Delaying Fair Elections Bill

I'm writing in opposition to this bill. I support a public funding option for elections and do not believe any reason of substance has been offered for delaying implementation of Act 244, The Big Island Fair Elections Act.

You have already heard from the public on this hard-won Act. For the past three years, I was among those advocating for its passage. Delaying it so that more people may join in the race makes no sense at all.

Join the wave of change that the country is embarking upon under our new president and get on the ball with implementation of Act 244 in 2010.

Mahalo,
Mary Spadaro
533-2172

FINTestimony

From: Erick Ehrhorn [ehrhornp001@hawaii.rr.com]
Sent: Thursday, February 26, 2009 6:43 AM
To: Rep. Marcus Oshiro; Rep. Marilyn Lee; FINTestimony
Subject: Strong opposition to HB 345 -- Delaying Fair Elections Bill

Marcus R. Oshiro
Marilyn B. Lee
Committee on Finance

Erick Ehrhorn
ehrhornp001@hawaii.rr.com
254 Kaha
Kailua, HI 96734

Friday, February 27, 2009 04:00 PM

Strong opposition to HB 345 -- Delaying Fair Elections Bill

I'm writing in opposition to this bill. I support a public funding option for elections because voter owned elections will save money, increase competition, and result in better government.

A 2005 AARP survey found that 76% of Hawaii's residents want a comprehensive public funding option for elections. Passing this bill would go directly against this popular law.

- It's not fair that a handful of Big Island representatives want to undermine a majority of Big Island residents and Hawaii residents.

Stop being afraid of a little competition. It builds character, stamina, and results in better arguments for all concern.

FINTestimony

From: Cory Harden [mh@interpac.net]
Sent: Thursday, February 26, 2009 8:03 AM
To: Rep. Marcus Oshiro; Rep. Marilyn Lee; FINTestimony
Subject: Strong opposition to HB 345 -- Delaying Fair Elections Bill

Marcus R. Oshiro
Marilyn B. Lee
Committee on Finance

Cory Harden
mh@interpac.net
Box 10265
Hilo, HI 96721

Friday, February 27, 2009 04:00 PM

Strong opposition to HB 345 -- Delaying Fair Elections Bill

I'm writing in opposition to this bill. When three-quarters of Hawai'i residents want clean elections, their representatives should support "the reform that makes all other reforms possible."

FINTestimony

From: Neil Frazer [neil@soest.hawaii.edu]
Sent: Wednesday, February 25, 2009 2:03 PM
To: Rep. Marcus Oshiro; Rep. Marilyn Lee; FINTestimony
Subject: Strong opposition to HB 345 -- Delaying Fair Elections Bill

Marcus R. Oshiro
Marilyn B. Lee
Committee on Finance

Neil Frazer
neil@soest.hawaii.edu
112 Haaoka Drive
Kailua, HI 96734

Friday, February 27, 2009 04:00 PM

Strong opposition to HB 345 -- Delaying Fair Elections Bill

Please, let us make an honest start at electoral reform by implementing Bill 244 as soon as possible. Today is the day to do the right thing.

Mahalo for your service to the people of Hawaii.

FINTestimony

From: Will Best [wbest@alum.haverford.edu]
Sent: Wednesday, February 25, 2009 9:48 PM
To: Rep. Marcus Oshiro; Rep. Marilyn Lee; FINTestimony
Subject: Strong opposition to HB 345 -- Delaying Fair Elections Bill

Marcus R. Oshiro
Marilyn B. Lee
Committee on Finance

Will Best
wbest@alum.haverford.edu
1419 Dominis St. #1208
Honolulu, HI 96822

Friday, February 27, 2009 04:00 PM

Strong opposition to HB 345 -- Delaying Fair Elections Bill

I'm writing in opposition to this bill. I support a public funding option for elections because it is a sincere attempt to reduce the influence of special interest money in politics. Public funding has already worked in other states, and it is supported by the body that whose elections would have this option -- the Hawaii County Council.

Public funding is supported by a majority of Hawaii residents. Why delay implementation? Please vote against this bill.

FINTestimony

From: Nai`a Newlight [naiapaia@maui-maven.com]
Sent: Wednesday, February 25, 2009 8:54 PM
To: Rep. Marcus Oshiro; Rep. Marilyn Lee; FINTestimony
Subject: Strong opposition to HB 345 -- Delaying Fair Elections Bill

Marcus R. Oshiro
Marilyn B. Lee
Committee on Finance

Nai`a Newlight
naiapaia@maui-maven.com
45 Laenui Place
Pa`ia, HI 96779

Friday, February 27, 2009 04:00 PM

Strong opposition to HB 345 -- Delaying Fair Elections Bill

I'm writing in opposition to this bill. I support a public funding option for elections because the people have spoken on this issue. After ten years of working to pass this bill, it would be a travesty to delay implementation of something as important as this bill

A 2005 AARP survey found that 76% of Hawaii's residents want a comprehensive public funding option for elections. Passing this bill would go directly against this popular law.

It's not fair that a handful of Big Island representatives want to undermine a majority of Big Island residents and Hawaii residents.

FINTestimony

From: Danielle Guion-Swenson [dani_lfrisco@hotmail.com]
Sent: Thursday, February 26, 2009 10:01 AM
To: Rep. Marcus Oshiro; Rep. Marilyn Lee; FINTestimony
Subject: Strong opposition to HB 345 -- Delaying Fair Elections Bill

Marcus R. Oshiro
Marilyn B. Lee
Committee on Finance

Danielle Guion-Swenson
dani_lfrisco@hotmail.com
92-732 Aoloko Place
Kapolei, HI 96707

Friday, February 27, 2009 04:00 PM

Strong opposition to HB 345 -- Delaying Fair Elections Bill

I'm writing in opposition to this bill. I support a public funding option for elections because FOR OUR LAWMAKERS TO REPRESENT "We the PEOPLE" public funding is it! Take the SPECIAL INTEREST out and put more INTEREST INTO OUR QUALITY OF LIFE! WE THE PEOPLE HAVE already spoken Who are YOU listening to?

FINTestimony

From: Kory Payne [kory@voterownedhawaii.org]
Sent: Thursday, February 26, 2009 10:03 AM
To: Rep. Marcus Oshiro; Rep. Marilyn Lee; FINTestimony
Subject: Strong opposition to HB 345 -- Delaying Fair Elections Bill

Marcus R. Oshiro
Marilyn B. Lee
Committee on Finance

Kory Payne
kory@voterownedhawaii.org
2065 Lanihuli Dr
Honolulu, HI 96822

Friday, February 27, 2009 04:00 PM

Strong opposition to HB 345 -- Delaying Fair Elections Bill

I'm writing in opposition to this bill. Money is not an issue for Act 244, and delaying its implementation is irresponsible.

For years, the Hawaii Election Campaign Fund has been in decline. The reason this is happening is obvious: citizens are not seeing the fund put to use for its original intent.

Act 244 would implement a comprehensive public funding option for Big Island County Council elections, which is clearly a popular program with the public. Implementing this law sooner, not later, will help encourage people to put \$3 into the HECF.

Further, Act 244 has monetary safeguards:

1. This program cannot run unless there is \$3.5 million in the HECF, and
2. There is a cap on the total amount of money that can be drawn from the HECF

Finally, implementing this type of reform makes fiscal sense for the long term for Hawaii's economy. Nobody likes the hassle, or the quid pro quo that often go along with the necessity to raise private money for campaigns. This program will test out a different alternative to raising as much money as possible. In the long run, candidates will be able to be more in tune with the working class in order to address their needs and concerns; and when the working class has their needs met, the economy is better off in the long term.

FINTestimony

From: Paul McKimmy [paul.mckimmy@gmail.com]
Sent: Thursday, February 26, 2009 10:13 AM
To: Rep. Marcus Oshiro; Rep. Marilyn Lee; FINTestimony
Subject: Strong opposition to HB 345 -- Delaying Fair Elections Bill

Marcus R. Oshiro
Marilyn B. Lee
Committee on Finance

Paul McKimmy
paul.mckimmy@gmail.com
2736 Puuhonua St.
Honolulu, HI 96822

Friday, February 27, 2009 04:00 PM

Strong opposition to HB 345 -- Delaying Fair Elections Bill

I'm writing in opposition to this bill. I support a public funding option for elections because it is the only proven method to increase the pool of candidates beyond the super rich or super-connected. Our governance deserves better than rule by the wealthy or rule by the corporations with biggest pocketbooks.

Delaying implementation is just another attempt to undermine public funding efforts by those that like the status-quo, regardless how perverse the elections system is.

FINTestimony

From: Elizabeth Dunne [elizabeth@lejhawaii.org]
Sent: Wednesday, February 25, 2009 11:02 PM
To: Rep. Marcus Oshiro; Rep. Marilyn Lee; FINTestimony
Subject: Strong opposition to HB 345 -- Delaying Fair Elections Bill

Marcus R. Oshiro
Marilyn B. Lee
Committee on Finance

Elizabeth Dunne
elizabeth@lejhawaii.org
Lawyers for Equal Justice, P.O. Box 37952 Honolulu, HI 96837

Friday, February 27, 2009 04:00 PM

Strong opposition to HB 345 -- Delaying Fair Elections Bill

Lawyers for Equal Justice (LEJ) is a non-profit law firm that advocates on behalf of low-income individuals and families in Hawai'i on civil legal issues of statewide importance. LEJ strongly opposes HB 345 which would delay implementation of Act 244 -- the Big Island public funding option.

Everyone should have an equal voice in government and an equal opportunity to run for office. Publicly funded candidates need to have the same opportunities as privately funded candidates. Nationally, and here in Hawaii, we've seen what happens when banks determine SEC regulations, when developers determine planning and zoning laws, and when drug companies influence health care decisions.

Delaying implementation of Act 244 is a disservice to Hawaii and to future generations. There is no sound reason to delay the Act's implementation. Indeed, doing so ignores the will of the people. A 2005 AARP survey found that 76% of Hawaii's residents want a comprehensive public funding option for elections.

The time for change is now. Full public funding options increase public participation and build public trust. For these reasons, we ask that Act 244 be implemented for the 2010 Big Island county council elections.

Mahalo for this opportunity to testify.

FINTestimony

From: Glen Carner [glen@hawaiiart.com]
Sent: Wednesday, February 25, 2009 10:53 PM
To: Rep. Marcus Oshiro; Rep. Marilyn Lee; FINTestimony
Subject: Strong opposition to HB 345 -- Delaying Fair Elections Bill

Marcus R. Oshiro
Marilyn B. Lee
Committee on Finance

Glen Carner
glen@hawaiiart.com
83-5305 Mamalahoa Hwy.
Captain Cook, HI 96704

Friday, February 27, 2009 04:00 PM

Strong opposition to HB 345 -- Delaying Fair Elections Bill

I'm writing in opposition to this bill. I support a public funding option for elections because this is the time for progressive electoral as well as other great changes in our political system. There will always be challenges that stand before public campaign financing, but now is not the time to back down from change and the people have spoken on the issue.

Ia halo Nui,

Glen Carner
HawaiiArt.com
HawaiiPictures.com
(808) 345-6333

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 26, 2009 5:14 PM
To: FINTestimony
Cc: sgd8@hawaiiantel.net
Subject: Testimony for HB345 on 2/27/2009 4:00:00 PM

Testimony for FIN 2/27/2009 4:00:00 PM HB345

Conference room: 308
Testifier position: oppose
Testifier will be present: No
Submitted by: Susan Dursin
Organization: Hawaii County League of Women Voters
Address: 83-5593 Middle Keel Road Capt. Cook, HI 96704
Phone: (808)328-8514
E-mail: sgd8@hawaiiantel.net
Submitted on: 2/26/2009

Comments:

Chairman Marcus Oshiro and members
House Finance Committee
In opposition to HB345
Hearing: February 27, 4:00 p.m.
From Hawaii County League of Women Voters Susan Dursin, Co-president

I would like to state my strong opposition to HB345. Many of us worked long and hard to pass a bill that was well-received by the public and the sitting 2007 Hawaii County Council. The Legislature saw fit to allow the proposed program to go forward. Frankly, nothing has really changed; the benefits to offering such financing are still very much in the interest of strong, participatory government.

Unfortunately, delaying this pilot project is tantamount to killing it. Many people here believe that such action justifies their distrust of government -- their feeling that the public will can be undone easily by a few individuals. The project needs to be implemented by 2010. I urge you NOT to pass HB345.

Thank you for allowing me to testify on this important subject.

FINTestimony

From: Emma Yuenn [nanueiki@gmail.com]
Sent: Wednesday, February 25, 2009 7:07 PM
To: Rep. Marcus Oshiro; Rep. Marilyn Lee; FINTestimony
Subject: Strong opposition to HB 345 -- Delaying Fair Elections Bill

Marcus R. Oshiro
Marilyn B. Lee
Committee on Finance

Emma Yuenn
nanueiki@gmail.com
1350 Ala Moana Blvd Apt 1209
Honolulu, HI 96814

Friday, February 27, 2009 04:00 PM

Strong opposition to HB 345 -- Delaying Fair Elections Bill

I strongly oppose this bill. I grew up on the Big Island and now live in Oahu, I was so proud that the Big Island was willing to be the first island to try publicly funded elections. However, this bill would delay the implementation of publicly funded elections which were supported by a strong majority of Hawaii's residents, and the county council of Hawaii. We must keep the momentum of the newly-passed publicly funded elections bill (aCT 244). Please do not pass HB 345! Mahalo