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**STATE OF HAWAII**  
**CAMPAIGN SPENDING COMMISSION**  
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February 22, 2010

TO: The Honorable Marcus R. Oshiro, Chair  
House Finance Committee

The Honorable Marilyn B. Lee, Vice-Chair  
House Finance Committee

Members of the House Finance Committee

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

**SUBJECT: Testimony on H.B. No. 2004, H.D. 1 Relating to Campaign Financing<sup>1</sup>**

Monday, February 22, 2010  
2:30 p.m., Conference Room 308

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

We strongly support H.B. No. 2004, H.D.1 which was introduced at the Campaign Spending Commission's (Commission) request, though we recommend several changes to the bill.

This bill proposes to:

- Clarify the law relating to ballot issue committees (section 1 and 2);
- Add a definition for automated phone call (section 2) and require that the automated phone call state certain information at the beginning of the call (section 7);
- Clarify the definition of an "advertisement" (section 2);
- Repeal a provision in section 11-193, Hawaii Revised Statutes, relating to the code of fair campaign practices, that was struck down by a court in 2001<sup>2</sup> (section 3);

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<sup>1</sup> The companion is S.B. No. 2252 which is a single referral bill to the Senate Committee on Judiciary and Government Operations. A hearing was held on the bill and decision making is scheduled for Monday February 22 at 11:00 a.m.

<sup>2</sup> Ancheta v. Watada, 135 F.Supp.2d 1114 (2001).

- Require that contributions be deposited in a depository institution or their branch physically located in the State (section 4);
- Restore transparency for contributions to a noncandidate committee and add an unspecified limit for contributions by a corporation or company to its noncandidate committee (section 5);
- Remove references to “penalties” and replace them with the term “fines;” and clarify that the Commission has discretion regarding fines (sections 3, 6, and 8). This language is drawn from HB No. 128, CD2 (2009, which was passed by the Legislature but vetoed by the Governor. The language is also included in H.B. No. 2003, HD 1 (2010) which is scheduled for a hearing by FIN at the same time as this bill; and
- Amend the statute relating to advertising to clarify that the notice and disclaimer be included on every web page containing an advertisement (section 7).

The provisions of this bill would take effect upon approval and apply to contributions and expenditures occurring on or after July 1, 2010; provided that sections 6 and 8 (relating to fines) shall take effect retroactive to July 8, 2008.

We strongly support this bill and urge the Committee to pass the bill, though we recommend that the Committee make several changes (prior to the FIN hearing on this bill we will attempt to communicate with the JUD chair to determine whether he is opposed or not opposed to our recommendations to FIN):

- While we appreciate that JUD included language in section 5 of the HD1 that amends HRS section 11-204(b) to restore transparency for contributions to noncandidate committees, we recommend that FIN include all of our language relating to transparency.

HD 1 language:

(b) ~~[No person or any other entity shall make contributions to a noncandidate committee, in an aggregate amount greater than \$1,000 in an election.]~~ A company shall make all contributions and expenditures greater than \$1,000 in the aggregate in a two-year election period solely through the company's noncandidate committee in accordance with paragraph (a)(1). The noncandidate committee shall register with the commission pursuant to section 11-194.

HB 2004's original language:

(b) (1) No person or any other entity shall make contributions to a noncandidate committee, in an aggregate amount greater than \$1,000 in an election[.]; except that in the case of a corporation or company using funds from its treasury, there shall be a \$ limit on contributions or

expenditures to the corporation or company's noncandidate committee; and

(2) A corporation or company shall make all contributions and expenditures greater than \$1,000 in the aggregate in a two-year election period solely through the corporation or company's noncandidate committee in accordance with paragraph (a)(1). The noncandidate committee shall register with the commission pursuant to section 11-194.

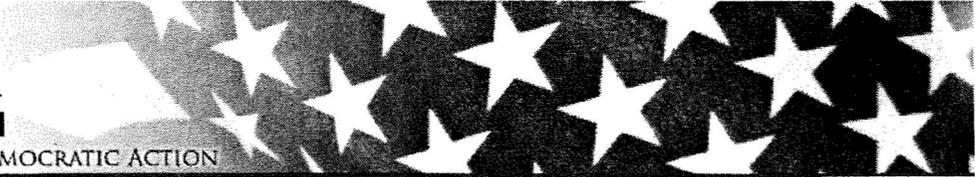
- Delete the proposed amendment in section 8, part 2 (which was added by JUD). While the amendment reads as follows, the reference to section 11-215(c) in the current law is correct.

(g) The provisions of this section shall not apply to any person who, prior to the commencement of proceedings under this section, has paid or agreed to pay the penalties prescribed by sections 11-213.5 and [~~11-215(e)~~] 11-215(e).



HAWAII

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February 21, 2010

To: Chair Marcus Oshiro, Vice Chair Marilyn Lee and Members  
House Committee on the Judiciary

From: Americans for Democratic Action/Hawaii'i  
Barbara Polk, Legislative Chair

Subject: **Testimony in Opposition to HB 2004 HD 1 Relating to Campaign Financing**

Americans for Democratic Action, Hawaii Chapter (ADA/H), opposes this bill as it is now written, although there are sections of it that we applaud. Taking those first, we are pleased to see the inclusion of new language on Ballot Issue Committees and automated phone calls.

However, Section 11-204 (b) eliminates any cap on contributions by any person to a non-candidate committee. This is wholly unacceptable, since it greatly tips the playing field in political matters toward those with the money to "buy" their politicians. This leads to the perception or reality of corruption of our political process. The previous limit of \$1000 per person donation in any election cycle to a non-candidate committee should be reinstated.

Section 11-204 also explicitly removes any limit on corporate giving to candidates, though contributions in excess of \$1000 would go through a non-candidate committee. While it is preferable, from the point of view of transparency, to have any corporate donations which may be permitted go through a corporate non-candidate committee, ADA/H is opposed to corporate contributions to political campaigns, despite the current Supreme Court ruling (which applies to corporate advertising, not to political donations). Allowing corporate political donations gives corporate board members, officers, or others in the position of directing those donations on behalf of the corporation, the ability to influence politics both through their role as an individual (a route available to all of us) and also through their corporate role. It is hardly a democracy when some individuals are given two or more channels for using money to influence elections while others have only one!

We again ask that you include language in this bill that prohibits corporations from making political donations to candidates, candidate committees, non-candidate committee, or political parties directly from their treasuries.

We also wonder why, in Section 3, the Campaign Spending Commission should be exempt from promulgating “a code of fair campaign practices.” Development of such a code is important to help maintain the integrity of our elections in the face of the increasing vehemence of the electorate. At a minimum, this should be a permitted activity of the Commission.

In Section 6 we are concerned with the provisions for penalties to a committee that files a substantially defective or deficient report. Not only is the CSC allowed to decide whether or not to levy a fine (a decision that inevitably will subject them to accusations of partisanship), but the fines may not be assessed until a date several days AFTER the election to which they refer. As a result, transparency can be completely evaded by any committee wishing to hide the sources of its funds by filing an inadequate report, then “correcting” it after the election, while still avoiding any penalty. We strongly urge you to rethink this time-table and ensure that it will be possible for the public to get information on who funds various candidates or committees before the primary or general election as well as to ensure that any candidate or committee violating the law is required to pay a substantial fine.

ADA/H cannot support this bill in its current form and urges you to either amend it substantially or defeat it. Thank you for this opportunity to testify on this bill.



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**House FIN Committee**  
**Monday 2/22/10 at 2:30PM in Room 308**  
**HB2004 HD1**

TESTIMONY

Nikki Love, Executive Director, Common Cause Hawaii

Chair Oshiro, Vice Chair Lee, and members of the Committee:

I would like to submit comments regarding **HB2004 HD1** relating to campaign financing.

**Fines**

We have concerns about the changes regarding penalties/fines. It appears to weaken enforcement of the reporting requirements. This could compromise the strength of our disclosure laws and diminish transparency for the public.

**Corporate Contributions – Transparency via Noncandidate Committee**

If the legislature decides to permit direct contributions from corporate treasuries, we strongly support the language in this bill which clarifies the mechanism—contributions from corporations and companies must flow through a noncandidate committee and be properly reported. We believe it is essential to have thorough, transparent reporting of these political donations from business interests.

**Corporate Contributions – Maximum Amount**

The recent U.S. Supreme Court decision in *Citizens United v. FEC* allows corporations and unions to spend freely on independent expenditures. However, please note that the Supreme Court did **NOT** overturn the federal ban on corporate donations to candidates. The federal ban on direct contributions is still in place.

Given these details, we believe the Hawaii legislature can and should insert a ban or low limit on direct corporate contributions to candidates.

In the original bill, the Campaign Spending Commission left a blank for the maximum amount that may be transferred from a corporation's treasury to its noncandidate committee. But this HD1 entirely removes any provision for an aggregate limit. We believe the amount of corporate funds given directly to candidates should be zero, or a very low limit—such as the previously established \$1,000 per election. As we have stated many times previously, we believe that campaign funds should come from individuals, not corporate treasuries.

Mahalo for the opportunity to submit testimony.