



**STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION**

235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

March 11, 2020

LATE

TO: The Honorable Chris Lee, Chair
House Committee on Judiciary

The Honorable Joy A. San Buenaventura, Vice Chair
House Committee on Judiciary

Members of the House Committee on Judiciary

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

SUBJECT: **Testimony on S.B. No. 2149, SD 1, Relating to Electioneering
Communications**

Thursday, March 12, 2020
2:31 p.m., Conference Room 325

Thank you for the opportunity to testify on this bill.¹ Although this measure was introduced as part of the Campaign Spending Commission's ("Commission") legislative package, the Commission opposes the SD 1 version of the bill. The SD 1 version of the bill makes the electioneering communications disclosure mandates application to only noncandidate committees by replacing "person" with "noncandidate committee" in Hawaii Revised Statutes ("HRS") §11-341. Thus, candidate committees and other persons would no longer have to file the required disclosure statements. As more fully discussed below, SD 1 strikes a tremendous blow to transparency in campaign finance.

This measure as originally drafted amended HRS §11-341 to change the definition of "disclosure date" from the first date a person has made expenditures during that year of more than \$2,000 to the first date the electioneering communication is publicly distributed, provided that more than \$2,000 has been spent. After the filing of a statement of information, the bill also amended that section to require further electioneering communications to be disclosed only after more than \$2,000 has been spent for electioneering communications since the most recent disclosure date.

The original bill further amended the definition of "electioneering communication" by deleting "at a bulk rate" from advertisements sent by mail so that all advertisements sent by mail,

¹ The companion bill, H.B. No. 1708, was deferred by this Committee on February 5, 2020.

be it bulk rate or first class, will be covered by the definition. Finally, the bill deleted items “that constitute expenditures by the expending organization” from the types of communications excluded from the definition of electioneering communication.

The changing of the disclosure date to when the advertisement runs, which triggers the need to file the statement of information, is timelier since contracts for these advertisements could occur weeks or months before the advertisements are publicly distributed. Also, after a committee files its first statement of information, requiring the spending of more than \$2,000 to again trigger the requirement of filing of another statement of information will reduce the number of disclosures that will be filed. This is especially true in cases where committees choose to buy numerous, inexpensive social media advertisements.

Finally, it makes no sense to consider advertisements mailed by bulk rate only, and not by any other postal rate, to be electioneering communications. Also, some committees have used the exclusion of items “that constitute expenditures by the expending organization” from the definition of electioneering communication, as a reason why those committees did not have to file statements of information. However, all committees are required to file statements of information for electioneering communications. HRS §§11-341(b)(2), 11-341(b)(3), & 11-341(b)(6). This exclusion is not needed since it cannot apply to committees already registered with the Commission and since the spending threshold for electioneering communications is more than \$2,000, any person making an expenditure for electioneering communication will have to register with the Commission.

However, by making the statute’s disclosure mandates only applicable to noncandidate committee, SD 1 dramatically reduce transparency in campaign spending. In the 2018 elections, candidate committees filed **1,099** electioneering communications disclosure statements. Noncandidate committees filed **204** disclosure statements and other persons² filed **9** disclosure statements. Thus, if SD 1 was in effect during the 2018 elections, disclosure statements (or transparency) would have been reduced by **84%**.³

The Commission respectfully requests that the Committee pass this measure as originally proposed by the Commission in SB 2149. Transparency must not be reduced.

² These were individuals spending their own funds, who by definition are not noncandidate committees.

³ The Senate committee report indicated that the newly required report due on April 30th of an election year for candidates obviated the need for candidates to file electioneering statements. However, the April 30th report only applies to candidates who file nomination papers before April 25th of the election year. Thus, clearly not all candidates will be filing the newly required report on April 30th. Also, the periodic disclosure reports are not the same as electioneering communications statements. The former shows a candidate spending over a period of time. The latter drills down to specific spending on specific advertisements and offers more timely information to the public. Given the passage of time, a person may be less inclined to pour over a disclosure report to find a candidate’s expenditures for a specific piece of advertising that ran some time ago.

SB-2149-SD-1

Submitted on: 3/10/2020 2:12:55 PM

Testimony for JUD on 3/12/2020 2:31:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|----------------------------------|-------------------------------|-------------------------------|
| Beppie Shapiro | League of Women Voters Hawaii | Support | No |

Comments:

The League of Women Voters fully supports SB2149 SD1

Statement Before The
HOUSE COMMITTEE ON JUDICIARY
Thursday, March 12, 2020
2:31 PM
State Capitol, Conference Room 325

in consideration of
SB 2149, SD1
RELATING TO ELECTIONEERING COMMUNICATIONS.

Chair LEE, Vice Chair SAN BUENAVENTURA, and Members of the House Judiciary Committee

Common Cause Hawaii supports the intent of SB 2149, SD1, which (1) applies the electioneering communication section only to noncandidate committees, (2) amends the definition of "disclosure date" to mean the date on which the electioneering communication is publicly distributed, (3) expands the definition of "electioneering communication" to apply to advertisements sent by any mail rate and communications regarding expenditures of the organization, and (4) makes a conforming statutory amendment relating to the determination of the date by which a person is deemed to have made a campaign expenditure.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening democracy through improving our campaign finance system with laws that amplify the voices of everyday Americans by requiring strong disclosures and making sure everyone plays by the same commonsense rules.

Common Cause Hawaii suggests amending SB 2149, SD1, to apply the electioneering communication section to "person", including candidate and noncandidate committees, as it was originally written. The electioneering communication reports are helpful to know if there is coordination between the candidate and outside groups, such as PACs and SuperPACs. See <https://www.fec.gov/help-candidates-and-committees/other-filers/making-electioneering-communications/>

SB 2149, SD1 provides that only noncandidate committees will be required to file electioneering communication disclosures once the \$2,000 aggregate threshold is reached within a calendar year and every subsequent time the \$2,000 aggregate threshold is reached in the same calendar year. Given that SB 2149, SD1 only applies to noncandidate committees, there will be less transparency as to electioneering communications by candidates and their committees. Again, Common Cause Hawaii suggests amending SB 2149, SD1, to apply the electioneering communication section to "person", including candidate and noncandidate committees, as it was originally written.

Section 11-341, Hawaii Revised Statutes, currently provides that candidates and noncandidate committees will be required to file electioneering communication disclosures if the \$2,000 aggregate threshold is reached and then for any electioneering communication thereafter.

While Common Cause Hawaii understands that filing a disclosure for a possible \$1 Facebook ad may be unduly burdensome for the Hawaii Campaign Spending Commission to process, the subsequent aggregate filing amount for electioneering communication disclosures, as proposed under SB 2149, SD1 should likely be lower than the \$2,000 aggregate amount proposed. There are some smaller races, such as county council races or neighbor island races, or uncontested races, that may not reach the \$2,000 subsequent aggregate amount proposed but would still benefit from disclosure for the transparency of our elections.

Thank you for the opportunity to testify supporting the intent of SB 2149, SD1 and suggesting that it be amended so that the electioneering communication section apply to “person”, including candidate and noncandidate committees, as it was originally written. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,
Sandy Ma
Executive Director, Common Cause Hawaii





Josh Frost - President • Patrick Shea - Treasurer • Kristin Hamada
Nelson Ho • Summer Starr

Thursday, March 12, 2020

LATE

Relating to Electioneering Communications
Testifying in Support with Amendments

Aloha Chair and members of the committee,

The Pono Hawai'i Initiative (PHI) **supports with amendments SB2149 SD1 Relating to Electioneering Communications**, which creates more transparency in the elections process.

The current draft provides that only noncandidate committees be required to file electioneering communication disclosures once it reaches \$2,000 aggregate in a calendar year. PHI requests that the measure be amended back to how it was originally drafted to include both candidate and noncandidate committees. PHI also recommends amending the threshold of \$2,000 since some smaller race elections could be affected by smaller advertising amounts.

For all these reasons, we urge you to vote in favor of this measure and include the amendments requested by Common Cause Hawai'i.

Mahalo for the opportunity,
Gary Hooser
Executive Director
Pono Hawai'i Initiative

SB-2149-SD-1

Submitted on: 3/11/2020 10:02:02 AM

Testimony for JUD on 3/12/2020 2:31:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|-------------------------------|-------------------------------|
| Edward B Hanel Jr | Individual | Support | No |

Comments:

Concur with CommonCause Hawaii commnts.

LATE

SB-2149-SD-1

Submitted on: 3/12/2020 12:35:35 AM

Testimony for JUD on 3/12/2020 2:31:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|----------------|--------------|-----------------------|-----------------------|
| Brodie Lockard | Individual | Support | No |

Comments:

SB-2149-SD-1

Submitted on: 3/12/2020 5:20:27 AM

Testimony for JUD on 3/12/2020 2:31:00 PM

LATE

| Submitted By | Organization | Testifier Position | Present at Hearing |
|-------------------|--------------|--------------------|--------------------|
| Caroline Kunitake | Individual | Support | No |

Comments:

Dear Chair Lee and Members on the Committee of Judiciary,

I am writing in support of SB2149 SD1 with amendments.

- Common Cause Hawaii suggests amending SB 2149, SD1, to apply the electioneering communication section to “person”, including candidate and noncandidate committees, as it was originally written. The electioneering communication reports are helpful to know if there is coordination between the candidate and outside groups, such as PACs and SuperPACs. See <https://www.fec.gov/help-candidates-and-committees/other-filers/making-electioneering-communications/>
- SB 2149, SD1 provides that only noncandidate committees will be required to file electioneering communication disclosures once the \$2,000 aggregate threshold is reached within a calendar year and every subsequent time the \$2,000 aggregate threshold is reached in the same calendar year. Given that SB 2149, SD1 only applies to noncandidate committees, there will be less transparency as to electioneering communications by candidates and their committees.
- Section 11-341, Hawaii Revised Statutes, currently provides that candidates and noncandidate committees will be required to file electioneering communication disclosures if the \$2,000 aggregate threshold is reached and then for any electioneering communication thereafter.
- While Common Cause Hawaii understands that filing a disclosure for a possible \$1 Facebook ad may be unduly burdensome for the Hawaii Campaign Spending Commission to process, the subsequent aggregate filing amount for electioneering communication disclosures, as proposed under SB 2149, SD1 should likely be lower than the \$2,000 aggregate amount proposed. There are

some smaller races, such as county council races or neighbor island races, or uncontested races, that may not reach the \$2,000 subsequent aggregate amount proposed but would still benefit from disclosure for the transparency of our elections.

- Again, please amending SB 2149, SD1, to apply the electioneering communication section to “person”, including candidate and noncandidate committees, as it was originally written.

Mahalo,

Caroline Kunitake