**STATE OF HAWAI'I**
**CAMPAIGN SPENDING COMMISSION**
235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

February 9, 2021

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

               The Honorable Jarrett Keohokalole, Vice Chair
               Senate Committee on Judiciary

               Members of the Senate Committee on Judiciary

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

SUBJECT:   **Testimony on S.B. No. 404, Relating to Electioneering Communications.**

Wednesday, February 10, 2021
9:15 a.m., Via Videoconference

      Thank you for the opportunity to testify on this bill.[1]  The Campaign Spending Commission ("Commission") supports this bill.

      This measure amends Hawaii Revised Statutes ("HRS") §11-341 to increase the amount of aggregate expenditures from more than $2,000 to more than $5,000 before the filing of a statement of information for electioneering communications is required,  The bill also amends the definition of "disclosure date" from the first date a person has made expenditures during that year to the first date the electioneering communication is publicly distributed, provided that more than $5,000 has been spent.

      The bill further amends the definition of "electioneering communication" by deleting "at a bulk rate" from advertisements sent by mail so that all advertisements sent by mail, be it bulk rate or first class, will be covered by the definition.  Finally, the bill deletes 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, increasing the threshold amount from $2,000 to $5,000 will reduce the burden on smaller

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[1] The companion bill is H.B. No. 144.

candidate committees with less activity.  Thus, committees that purchase only inexpensive social media advertisements, and a candidate for a house district who pays for only one district-wide mailer would probably not need to file statements of information.

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 $1,000, any person filing a statement of information for electioneering communication will have to register with the Commission.

**Common Cause**

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Statement Before The
**SENATE COMMITTEE ON JUDICIARY**
Wednesday, February 10, 2021
9:15 AM
Via Videoconference

in consideration of
**SB 404**
**RELATING TO ELECTIONEERING COMMUNICATIONS.**

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

Common Cause Hawaii supports SB 404, with suggested amendments. SB 404 increases the monetary threshold that requires disclosure of electioneering communications, requires that disclosures of electioneering communications occur on the date the electioneering communications are publicly distributed, classifies election advertisements sent by mail at any postal rate, and election advertisements that are expenditures of an organization, as electioneering communications.

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.

SB 404 provides, at page 1, lines 4-8, that each person who makes an expenditure for electioneering communications in an aggregate amount of more than $5,000 (increased from $2,000) during any calendar year shall file with the commission a statement of information within twenty—four hours of each disclosure date as provided in Hawaii Revised Statutes (HRS) § 11-341. Common Cause Hawaii is concerned that raising the amount from $2,000 to $5,000 to trigger electioneering communication disclosure will result in smaller races, such as some county council races, not meeting the $5,000 threshold to file the statement of information. Common Cause Hawaii suggests raising the limit from $2,000 to $3,000 for transparency to ensure that smaller, local races will also be subject to HRS § 11-341.

SB 404 also amends the definition of "disclosure date" at page 3, lines 19-21, and page 4, lines 1-8 to the "date on which subsequent electioneering communication is publicly distributed" versus the original definition of "has made expenditures" on page 3, lines 20-21. Common Cause Hawaii is concerned with definitional change to "disclosure date". This is because an electioneering communication may be contracted / purchased and then subsequently and serially distributed at a later time. Transparency is better served if an electioneering communication statement of information is timely filed when contracted versus distributed. Common Cause Hawaii suggests keeping the original definition of "disclosure date".

Thank you for the opportunity to testify in support of SB 404 with suggested amendments. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii

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