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February 2, 2021

TO: Honorable Rosalyn H. Baker, Chair
Senate Committee on Commerce and Consumer Protection

FROM: Alice L. Lee
Council Chair 

DATE: February 3, 2021

SUBJECT: **SUPPORT OF SB 201, RELATING TO RELATING TO CORPORATIONS**

Thank you for the opportunity to testify in SUPPORT of this important measure. The purpose of this measure is to require domestic and foreign corporations to provide their shareholders with reports of independent expenditures and political contributions.

I SUPPORT this measure for the following reason:

1. This is a consumer protection measure that provides both consumers and shareholders valuable information on political contributions made by businesses.
2. The measure aims to increase transparency and inform the public so they can make informed decisions. The government, at all levels, has an interest in ensuring that shareholders and the general public are well informed. As the bill states, "Corporate reporting obligations provide information to the shareholders about who is speaking—"information that is vital to the efficient functioning of the marketplace of ideas, and thus to advancing the democratic objectives underlying the First Amendment." (Quoting the Federal appellate court with jurisdiction over Hawaii.)
3. For the same reasons, I also support other measures, including HB 190, SB 442, HB 503, and SB 661, that increase transparency and inform the public so they might have meaningful participation in government and the legislative process.

For the foregoing reason, I SUPPORT this measure.

Presentation To The
Committee on Commerce and Consumer Protection
February 4, 2021 at 9:30 AM
State Capitol Conference Room 229

Testimony in Opposition to Senate Bill 201

TO: The Honorable Rosalyn H. Baker, Chair, Committee on Commerce and Consumer Protection
The Honorable Stanley Chang, Vice Chair Committee on Commerce and Consumer Protection
Members of the Committee

My name is Neal K. Okabayashi, the Executive Director of the Hawaii Bankers Association (HBA). HBA is the trade association representing banks with branches in Hawai'i. The HBA opposes SB 201 because it will duplicate existing reports, causing an undue burden in preparing and delivering the disclosures, and is not necessary to address issues related to campaign spending violations.

SB 201 is a good faith effort to address certain campaign spending issues but it does not address the problem because corporations do not cause substantive problems. The Hawaii Campaign Spending Commission annual reports from 2007 to 2020 reveals significant violations were not committed by corporations and most of the violations were either late filings of reports or unfiled reports. The most egregious violation was attributed to a candidate.

In the Yamada case cited in the bill's preamble, the issue of law in the case was on constitutionality of certain provisions rather than blatant, unconcealed violations of campaign spending. In fact, the Court in the Yamada case said the Hawaii campaign spending reporting and disclosure requirements were doing exactly what this bill intends to do.

This bill proposes to require domestic and foreign corporations doing business in Hawaii that breach a \$10,000 threshold of contributions and independent expenditures in a year shall disclose certain information to their shareholders annually. Thus, it is possible that companies as large as Amazon or as small as Mom and Pop, Inc. will have to disclose the information but the bill does not state how the disclosure is to be made other than to require it shall be delivered. Hawaii law requires corporations to conduct an annual meeting but does not require an annual report prepared by publicly traded companies. Hawaii law does require an annual report to be filed with DBREG which contains only certain corporate information such as address and name of officers and directors. The annual report is usually a page or two and is longer only if the list of officers and directors is lengthy. No financial information or campaign spending information is contained or required in the report to DBREG.

Undue Burden or Unduly Onerous

As reflected in the Yamada decision, a factor to be considered as to the legality of a campaign spending law is whether it places an undue burden or unduly onerous.

It is highly likely that corporations doing business in Hawaii are not large corporations but small corporations may lack the resources to comply with the law, such as delivering the disclosure to shareholders.

According to the State of Hawaii data book prepared by DBEDT, as of the end of fiscal year 2019, there were about 29,000 domestic corporations and approximately 14,000 foreign (non-Hawaii) corporations in Hawaii, or a total of roughly 43,000 corporations. To require all of those corporations to consider whether it is subject to the law and possibly disseminate the required information to all of its shareholders is an undue burden which does not accomplish the desired result.

With 43,000 corporations, the number of shareholders is difficult to quantify but it is definitely large. Corporations that do not contribute over the threshold still must track contributions to ensure they are not over the limit, which may be breached inadvertently.

The bill assumes that the corporation knows the identity of its shareholders. While that may be true for a small corporation, it is not true for a larger company, especially one whose shares are publicly traded. For such companies, the identity is not known because the shares are usually held in "street names" by brokerages and mutual funds, or another form of nominee.

Vague and Unclear Requirements

This bill may lead to litigation based on the requirement that the corporation identify "the specific monetary or nonmonetary benefit that accrued to the domestic or foreign corporation as a direct result" of the contributions and independent expenditures. The term "specific monetary or nonmonetary benefit" is undefined and is so vague as to render the corporation in a quandary as to calculating the benefit.

Duplication

Already, the Hawaii Campaign Spending laws requires disclosure by a corporation with contributions over \$1,000. This is sufficient and adequate disclosure. The reports filed with the Campaign Spending Commission are available to the public online on the Commission's website. The Commission noted in their last annual report that one of their goals was to provide the public with campaign finance data and information. As stated in the Yamada case: "Second, Hawaii's reporting and disclosure obligation 'deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity.'" The opinion continues to say: "Third, the registration, record keeping, reporting and disclosure requirements provide a means of detecting violations of valid contribution limitations, preventing circumvention of Hawaii's campaign spending limitations ... " Thus, there is no need to add to the reporting requirements.

Unlevel Playing Field

We certainly are not suggesting that other organizational entities, such as unions, limited liability companies and federal corporations, also be subject to this proposed bill but the disparity of treatment does suggest that targeting corporations when there are adequate safeguards already in place to require reporting and disclosures is imprudent.

Thank you for the opportunity to submit this testimony on SB 201 and please let us know if we can provide further information.

Neal K. Okabayashi
(808) 524-5161

MCCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

February 2, 2021

Honorable Rosalyn H. Baker, Chair
Honorable Stanley Chang, Vice Chair
Committee on Commerce and Consumer Protection
The Senate
State Capitol
415 South Beretania Street
Honolulu, Hawai'i 96813

Re: S.B. NO. 201, RELATING TO CORPORATIONS

Dear Chair Baker, Vice Chair Chang and Committee Members:

On behalf of the American Family Life Assurance Company of Columbus (AFLAC), we respectfully submit the following written comments on Senate Bill No. 201, relating to corporations, which is to be heard by your Committee on Commerce and Consumer Protection on February 4, 2021.

Senate Bill No. 201 would require domestic and foreign corporations to provide their shareholders with reports of independent expenditures and political contributions. We note the concerns that have been raised by the Hawaii Bankers Association in connection with Senate Bill No. 201, and request that they be considered in connection with Senate Bill No. 201.

If the Committee on Commerce and Consumer Protection is inclined to move Senate Bill No. 201 forward, we respectfully request that the measure be amended to expressly provide that a corporation be allowed to post the required report on its website, as requiring publicly-trade companies such as AFLAC to mail the reports to individual shareholders would be prohibitively burdensome and costly.

Thank you for your consideration of the foregoing.

Very truly yours,

MCCORRISTON MILLER MUKAI MACKINNON LLP



Peter J. Hamasaki

SB-201

Submitted on: 1/31/2021 6:10:48 PM

Testimony for CPN on 2/4/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
cathy lee	Individual	Support	No

Comments:

I support SB201. Better reporting and transparency should be the foundation of all our operations.