
A BILL FOR AN ACT

RELATING TO CAMPAIGN SPENDING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that in the seminal case
2 on campaign finance law, *Buckley v. Valeo*, 424 U.S. 1 (1976),
3 the United States Supreme Court acknowledged the sufficiently
4 important government interest in ensuring that voters are fully
5 informed through campaign spending disclosure requirements. The
6 Court also acknowledged that campaign spending disclosure
7 requirements directly serve the sufficiently important
8 government interests in deterring corruption and the appearance
9 of corruption, as well as in gathering the data necessary to
10 detect campaign spending violations.

11 The legislature further finds that the State has a
12 sufficiently important government interest in an informed
13 electorate, deterring corruption and the appearance of
14 corruption, and gathering data necessary to detect campaign
15 spending violations. Campaign disclosure requirements directly
16 serve these sufficiently important government interests.



1 The legislature further finds that the State's existing
2 campaign finance laws fail to reveal the true source of dark
3 money campaign spending. Dark money campaign spending occurs
4 when an organization, such as a section 501(c)(4) nonprofit
5 organization, raises funds through donations, then uses the
6 donations on campaign expenditures in an attempt to influence
7 elections. It is dark money because the organization is not
8 required, under existing law, to disclose the identity of the
9 donors making the donations. As a result, there is a lack of
10 transparency that fails to inform the public on who is trying to
11 influence an election.

12 The legislature notes that in recent national and local
13 elections, nonprofit organizations have used dark money to
14 influence the outcome of elections. In addition, donors to
15 these nonprofit organizations may not be aware that their
16 donations are being used for political purposes. The
17 legislature finds that section 501(c)(4) nonprofit organizations
18 are tax-exempt as a social welfare organization, must not be
19 organized for profit, and must be operated exclusively to
20 promote social welfare. The Internal Revenue Service describes
21 "exclusively promoting social welfare" as operating primarily to



1 further the common good general welfare of the community. The
2 promotion of social welfare does not include direct or indirect
3 participation or intervention in political campaigns on behalf
4 of or in opposition to any candidate for public office.

5 However, the Internal Revenue Service code states that
6 social welfare organizations may engage in some political
7 activities, so long as those activities are not their primary
8 activity. Arguably, this means that an organization can use
9 49.99 per cent of its funds to engage in political activity and
10 still maintain its tax-exempt status, all while hiding its
11 donors' involvement in political campaigning. Also, the
12 Internal Revenue Service is currently not authorized to use any
13 funds to investigate these activities to ensure compliance.
14 This allows section 501(c)(4) nonprofit organizations to engage
15 in and spend unregulated amounts of money on political activity
16 without any consequences or oversight, conceivably well above
17 the political activity percentage threshold allowed, which is
18 currently happening in national and local politics.

19 The legislature also finds that there is a compelling state
20 interest in monitoring these nonprofit organizations to ensure
21 they are not improperly using funds to influence the political



1 process. The government has legitimate interests in
2 safeguarding democracy and ensuring campaign spending laws are
3 followed, which is furthered by these additional reporting
4 requirements.

5 The purpose of this Act is to enhance existing campaign
6 spending disclosure requirements to ensure that the true source
7 of campaign spending is disclosed to the electorate. This Act
8 also enhances existing disclosure requirements to deter
9 corruption or the appearance of corruption and to enable the
10 gathering of data necessary to detect violations of campaign
11 finance laws. Organizations that meet campaign spending
12 thresholds are currently required to disclose the identities of
13 its contributors. Under the enhanced disclosure requirements
14 contained in this Act, organizations that meet campaign spending
15 thresholds will also be required to disclose the identities of
16 its donors.

17 SECTION 2. Section 11-302, Hawaii Revised Statutes, is
18 amended by adding four new definitions to be appropriately
19 inserted and to read as follows:

20 "Donation" means all transfers of money, credit or debit
21 card transactions, on-line payments, payments made through a



1 third party, paid personal services, or transfers of any other
2 thing of value to a nonprofit organization.

3 "Donor" means a person that makes a donation to a nonprofit
4 organization.

5 "Electioneering communication" means any advertisement that
6 is broadcast from a cable, satellite, television, or radio
7 broadcast station; published in any periodical or newspaper or
8 by electronic means; or sent by mail, and that:

9 (1) Refers to a clearly identifiable candidate;

10 (2) Is made, or scheduled to be made, either within thirty
11 days before a primary or initial special election or
12 within sixty days before a general or special
13 election; and

14 (3) Is not susceptible to any reasonable interpretation
15 other than as an appeal to vote for or against a
16 specific candidate.

17 "Electioneering communication" shall not include
18 communications:

19 (1) In a news story or editorial disseminated by any
20 broadcast station or publisher of periodicals or
21 newspapers, unless the facilities are owned or



1 controlled by a candidate, candidate committee, or
2 noncandidate committee;

3 (2) In-house bulletins; or

4 (3) That constitute a candidate debate or forum, or solely
5 promote a debate or forum and are made by or on behalf
6 of the person sponsoring the debate or forum.

7 "Last in, first out" means an accounting method by which
8 contributions are attributed to contributors or donations are
9 attributed to donors, in reverse chronological order beginning
10 with the most recent contributor or donor.

11 "Nonprofit organization" means an organization that is
12 exempt from federal taxation under section 501(c)(4) of the
13 Internal Revenue Code of 1986, as amended."

14 SECTION 3. Section 11-335, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§11-335 Noncandidate committee reports.** (a) The
17 authorized person in the case of a party, or treasurer in the
18 case of a noncandidate committee that is not a party, shall file
19 preliminary, final, and supplemental reports that disclose the
20 following information:

21 (1) The noncandidate committee's name and address;



1 (2) The cash on hand at the beginning of the reporting
2 period and election period;

3 (3) The reporting period and election period aggregate
4 totals for each of the following categories:

5 (A) Contributions received;

6 (B) Contributions made;

7 (C) Expenditures; and

8 (D) Other receipts;

9 (4) The cash on hand at the end of the reporting period;
10 and

11 (5) The surplus or deficit at the end of the reporting
12 period.

13 (b) Schedules filed with the reports shall include the
14 following additional information:

15 (1) The amount and date of deposit of each contribution
16 received and the name, address, occupation, and
17 employer of each contributor making a contribution
18 aggregating more than \$100 during an election period,
19 which was not previously reported[+] pursuant to this
20 section; provided that if:



- 1 (A) All the information is not on file, the
2 contribution shall be returned to the contributor
3 within thirty days of deposit; and
- 4 (B) A noncandidate committee making only independent
5 expenditures receives a contribution of more than
6 \$10,000 in the aggregate in an election period
7 from an entity other than an individual, for-
8 profit business entity, or labor union, then the
9 schedule shall include:
- 10 (i) The internet address where the contributing
11 entity's disclosure report can be publicly
12 accessed, if the contributing entity is
13 subject to state or federal disclosure
14 reporting requirements regarding the source
15 of the contributing entity's funds;
- 16 (ii) The name, address, occupation, and employer
17 of each funding source that contributed \$100
18 or more in the aggregate in an election
19 period to that contributing entity; or
- 20 (iii) An acknowledgment that the contributing
21 entity is not subject to any state or



1 federal disclosure reporting requirements
2 regarding the source of the contributing
3 entity's funds;

4 (2) The amount and date of each contribution made and the
5 name and address of the candidate, candidate
6 committee, or noncandidate committee to which the
7 contribution was made;

8 (3) All expenditures, including the name and address of
9 each payee and the amount, date, and purpose of each
10 expenditure; provided that:

11 (A) Expenditures for advertisements or electioneering
12 communications shall include the names of the
13 candidates supported, opposed, or clearly
14 identified;

15 (B) Expenditures for consultants, advertising
16 agencies and similar firms, credit card payments,
17 and salaries shall be itemized to permit a
18 reasonable person to determine the ultimate
19 intended recipient of the expenditure and its
20 purpose;



1 (C) Independent expenditures shall include the name
2 of any candidate supported, opposed, or clearly
3 identified; and

4 (D) The purpose of an independent expenditure shall
5 include the name of the candidate who is
6 supported or opposed by the expenditure, and
7 whether the expenditure supports or opposes the
8 candidate;

9 (4) For noncandidate committees making only independent
10 expenditures, certification that no expenditures have
11 been coordinated with a candidate, candidate
12 committee, or any agent of a candidate or candidate
13 committee;

14 (5) The amount, date of deposit, and description of other
15 receipts and the name and address of the source of
16 each of the other receipts;

17 (6) A description of each durable asset, the date of
18 acquisition, value at the time of acquisition, and the
19 name and address of the vendor or contributor of the
20 asset; [~~and~~]



1 (7) The date of disposition of a durable asset, value at
2 the time of disposition, method of disposition, and
3 name and address of the person receiving the asset[-];
4 and

5 (8) For donations received by a nonprofit organization,
6 the amount and date of deposit of each donation
7 received and the name and address of each donor making
8 a donation aggregating more than \$100 during an
9 election period, which was not previously reported
10 pursuant to this section; provided that a schedule
11 filed pursuant to this section shall not include a
12 donor if:

13 (A) The nonprofit organization and the donor mutually
14 agree that the donation shall not be used for
15 electioneering communications, independent
16 expenditures, or contributions; and

17 (B) No later than thirty days after receipt of the
18 donation the nonprofit organization transmits to
19 the donor a written confirmation by the nonprofit
20 organization's highest ranking official that the
21 donation will not be used for electioneering



1 communications, independent expenditures, or
2 contributions, and the donor will not appear in
3 the schedule filed by the nonprofit organization.

4 (c) No loan may be made or received by a noncandidate
5 committee.

6 (d) The authorized person in the case of a party, or
7 treasurer in the case of a noncandidate committee that is not a
8 party, shall file a late contribution report as provided in
9 section 11-338 if the committee receives late contributions from
10 any person aggregating more than \$500 or makes late
11 contributions aggregating more than \$500.

12 ~~[(e) For purposes of this section, "electioneering~~
13 ~~communication" means the same as defined in section 11-341.]"~~

14 SECTION 4. Section 11-338, Hawaii Revised Statutes, is
15 amended by amending subsection (b) to read as follows:

16 "(b) The late contribution report shall include the
17 following information:

18 (1) Name, address, occupation, and employer of the
19 contributor;

20 (2) Name of the candidate, candidate committee, or
21 noncandidate committee making or receiving the



1 contribution; provided that, for noncandidate
2 committees making only independent expenditures, if a
3 late contribution greater than \$5,000 in the aggregate
4 is received from an entity other than an individual,
5 for-profit business entity, or labor union, then the
6 report shall include:

7 (A) The internet address where the contributing
8 entity's disclosure report can be publicly
9 accessed, if the contributing entity is subject
10 to any state or federal disclosure reporting
11 requirements regarding the source of the
12 contributing entity's funds;

13 (B) The name, address, occupation, and employer of
14 each funding source of more than \$100 in the
15 aggregate to that contributing entity; or

16 (C) An acknowledgment that the contributing entity is
17 not subject to any state or federal disclosure
18 reporting requirements regarding the source of
19 the contributing entity's funds;

20 (3) The amount of the contribution received;

21 (4) The amount of the contribution made;



- 1 (5) The contributor's aggregate contributions to the
2 candidate, candidate committee, or noncandidate
3 committee; [~~and~~]
- 4 (6) The purpose, if any, to which the contribution will be
5 applied, including, for contributions to a
6 noncandidate committee, the name of any candidate
7 supported, opposed, or clearly identified[-]; and
- 8 (7) For donations received by a nonprofit organization,
9 the amount and date of deposit of each donation
10 received and the name and address of each donor making
11 a donation aggregating more than \$100 during an
12 election period, which was not previously reported
13 pursuant to this section; provided that a schedule
14 filed pursuant to this section shall not include a
15 donor if:
- 16 (A) The nonprofit organization and the donor mutually
17 agree that the donation shall not be used for
18 electioneering communications, independent
19 expenditures, or contributions; and
- 20 (B) No later than thirty days after receipt of the
21 donation the nonprofit organization transmits to



1 the donor a written confirmation by the nonprofit
2 organization's highest ranking official that the
3 donation will not be used for electioneering
4 communications, independent expenditures, or
5 contributions, and the donor will not appear in
6 the schedule filed by the nonprofit
7 organization."

8 SECTION 5. Section 11-341, Hawaii Revised Statutes, is
9 amended to read as follows:

10 1. By amending subsection (b) to read:

11 "(b) Each statement of information shall contain the
12 following:

13 (1) The name of the person making the expenditure, name of
14 any person or entity sharing or exercising discretion
15 or control over the person, and the custodian of the
16 books and accounts of the person making the
17 expenditure;

18 (2) The names and titles of the executives or board of
19 directors who authorized the expenditure, if the
20 expenditure was made by a noncandidate committee,
21 business entity, or an organization;



- 1 (3) The state of incorporation or formation and principal
2 address of the noncandidate committee, business
3 entity, or organization or for an individual, the
4 name, address, occupation, and employer of the
5 individual making the expenditure;
- 6 (4) The amount of each expenditure during the period
7 covered by the statement of information and the
8 identification of the person to whom the expenditure
9 was made;
- 10 (5) The elections to which the electioneering
11 communications pertain and the names of any clearly
12 identifiable candidates and whether those candidates
13 are supported or opposed;
- 14 (6) [~~If the expenditures were made by a noncandidate~~
15 ~~committee, the~~] The names and addresses of [all
16 ~~persons who contributed to the noncandidate committee~~
17 ~~for the purpose of publishing or broadcasting the~~
18 ~~electioneering communications,]~~ the top three
19 contributors contributing an aggregate of more than
20 \$100 using the last in, first out accounting method
21 from the disclosure date;



- 1 (7) ~~[If the expenditures were made by an organization~~
2 ~~other than a noncandidate committee, the names and~~
3 ~~addresses of all persons who contributed to the~~
4 ~~organization for the purpose of publishing or~~
5 ~~broadcasting the electioneering communications;]~~ The
6 names and addresses of the top three donors donating
7 an aggregate of more than \$100 using the last in,
8 first out accounting method from the disclosure date;
9 provided that a statement of information shall not
10 include a donor's name or address if the nonprofit
11 organization and the donor mutually agree that the
12 donation shall not be used for electioneering
13 communications and no later than thirty days after
14 receipt of the donation the nonprofit organization
15 transmits to the donor a written certification by the
16 nonprofit organization's highest ranking official
17 that:
- 18 (A) The donation will not be used for electioneering
19 communications; and
- 20 (B) The name and address of the donor will not appear
21 in the statement of information;



1 (8) Whether any electioneering communication is made in
2 coordination, cooperation, or concert with or at the
3 request or suggestion of any candidate, candidate
4 committee, or noncandidate committee, or agent of any
5 candidate if any, and if so, the identification of the
6 candidate, candidate committee, or noncandidate
7 committee, or agent involved; and

8 (9) The three top contributors as required under section
9 11-393, if applicable."

10 2. By amending subsection (d) to read:

11 "(d) For purposes of this section:

12 "Disclosure date" means, for every calendar year, the first
13 date [~~by which a person has made expenditures during that same~~
14 ~~year of more than \$1,000 in the aggregate for electioneering~~
15 ~~communications.] electioneering communications of an aggregate
16 of more than \$1,000 is publicly distributed.~~

17 [~~"Electioneering communication" means any advertisement~~
18 ~~that is broadcast from a cable, satellite, television, or radio~~
19 ~~broadcast station; published in any periodical or newspaper or~~
20 ~~by electronic means; or sent by mail, and that:~~

21 ~~(1) Refers to a clearly identifiable candidate;~~



1 ~~(2) Is made, or scheduled to be made, either within thirty~~
2 ~~days before a primary or initial special election or~~
3 ~~within sixty days before a general or special~~
4 ~~election; and~~

5 ~~(3) Is not susceptible to any reasonable interpretation~~
6 ~~other than as an appeal to vote for or against a~~
7 ~~specific candidate.~~

8 ~~"Electioneering communication" shall not include communications:~~

9 ~~(1) In a news story or editorial disseminated by any~~
10 ~~broadcast station or publisher of periodicals or~~
11 ~~newspapers, unless the facilities are owned or~~
12 ~~controlled by a candidate, candidate committee, or~~
13 ~~noncandidate committee;~~

14 ~~(2) That constitute actual expenditures by the expending~~
15 ~~organization;~~

16 ~~(3) In house bulletins; or~~

17 ~~(4) That constitute a candidate debate or forum, or solely~~
18 ~~promote a debate or forum and are made by or on behalf~~
19 ~~of the person sponsoring the debate or forum.]~~

20 "Person" shall not include a candidate or candidate
21 committee."



1 SECTION 6. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect upon its approval.
4



Report Title:

Campaign Spending; Electioneering Communication; Disclosures

Description:

Informs the public of the true sources of dark money contributions by requiring section 501(c)(4) organizations to disclose the name and address of donors who donate an aggregate of more than \$100, with certain exceptions. Adds definitions. (Proposed HD1)

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