

STAND. COM. REP. NO.

761

Honolulu, Hawaii

MAR 03 2023

RE: S.B. No. 917
S.D. 2

Honorable Ronald D. Kouchi
President of the Senate
Thirty-Second State Legislature
Regular Session of 2023
State of Hawaii

Sir:

Your Committee on Ways and Means, to which was referred S.B. No. 917, S.D. 1, entitled:

"A BILL FOR AN ACT PROPOSING AN AMENDMENT TO THE HAWAII STATE CONSTITUTION REGARDING THE FREEDOM OF SPEECH,"

begs leave to report as follows:

The purpose and intent of this measure is to propose an amendment to article I, section 4, of the Constitution of the State of Hawaii to provide that freedom of speech protections under the state constitution do not include the expenditure of money to influence elections.

Your Committee received written comments in support of this measure from the Stonewall Caucus of the Democratic Party of Hawaii, Kauai Women's Caucus, and four individuals.

Your Committee received written comments in opposition to this measure from one individual.

Your Committee finds that the United States Supreme Court's decision in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), reversed certain campaign finance restrictions as violative as free speech protections under the First Amendment of the Constitution of the United States. Your Committee also finds that the Court's decision has led to significant increases in political expenditures by corporations, special interest groups,



and political action committees. Your Committee recognizes that this proposed amendment to the state constitution, even if adopted, will have no immediate effect, due to the supremacy of the United States Supreme Court's decision. However, your Committee recognizes that this amendment may be valuable if *Citizens United* is overturned in the future.

Your Committee notes that a portion of the measure's proposed constitutional ratification question appears to exceed the scope of the actual proposed state constitutional amendment. The language in question speculates on when the proposed state constitutional amendment might "take effect", based on hypothetical future events. The language also incorrectly states that the United States Congress may "override" the *Citizens United* court decision, and provides a truncated summary of that decision. In short, your Committee finds that this language may be unnecessary, and may potentially run afoul of section 11-118.5(a), Hawaii Revised Statutes, which requires that a constitutional ratification question "shall be phrased in a manner to enable voters to express their choice on the constitutional amendment by providing a 'yes' or 'no' response" and that the "language and meaning of a constitutional amendment shall be clear and it shall be neither misleading nor deceptive." Accordingly, your Committee suggests that, if this measure continues to move through the legislative process, it may be appropriate for future committees to further amend the measure by limiting the constitutional ratification question to a description of the text of the proposed constitutional amendment.

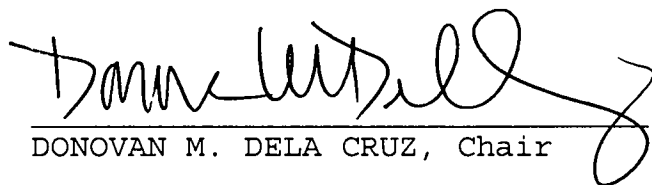
Your Committee has amended this measure by:

- (1) Changing the effective date to July 1, 2050, to facilitate further discussion on the measure; and
- (2) Making technical nonsubstantive amendments for purposes of clarity, consistency, and style.



As affirmed by the record of votes of the members of your Committee on Ways and Means that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 917, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 917, S.D. 2.

Respectfully submitted on
behalf of the members of the
Committee on Ways and Means,


DONOVAN M. DELA CRUZ, Chair



