



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

H.B. NO. 2184, H.D. 1, RELATING TO CAMPAIGN FINANCE.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Thursday, March 14, 2024 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 016 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Candace J. Park, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General provides the following comments.

This bill adds a new section to part XIII of chapter 11, Hawaii Revised Statutes (HRS), containing three new subsections: (a), (b), and (c). Subsection (a) prohibits a person convicted under section 11-412, HRS, (campaign finance) or found in violation of chapter 84, HRS, (ethics code) or found in violation of chapter 97, HRS, (lobbyists), from participating in certain campaign activities. Subsection (b) requires that funds received in violation of subsection (a) escheat to the Hawaii Election Campaign Fund. Subsection (c) requires that all contributions in a campaign account on the date a person is convicted or found in violation of an offense described in subsection (a) be returned to the respective contributors or escheat to the Hawaii Election Campaign Fund.

Subsection (b) on page 2, lines 18-21, provides "Funds that were received by a candidate, candidate committee, or noncandidate committee from a person in violation of subsection (a) shall escheat to the Hawaii election campaign fund." The phrase "from a person in violation of subsection (a)" fails to specify how a person is determined to be in violation of subsection (a). It also fails to recognize that a person can also be found criminally liable under section 11-412, HRS, for violating subsection (a). To avoid any ambiguity, we recommend amending subsection (b) as follows: "Funds that were received by a candidate, candidate committee, or noncandidate committee from a

person found in violation of or convicted of violating subsection (a) shall escheat to the Hawaii election campaign fund."

Subsection (c) on page 3, lines 1-8, indicates "All contributions remaining in a campaign account within a depository institution on the date that the person is convicted or found in violation of an offense described in subsection (a) shall be returned to their respective contributors no later than thirty days from the date of conviction or date found in violation. Any contributions not returned to their respective contributors within the thirty days shall escheat to the Hawaii election campaign fund."

Subsection (c) is ambiguous; it is unclear whether subsection (c) applies to a person who is convicted of or found in violation of subsection (a); or whether subsection (c) applies to a person who is convicted or found in violation of an offense described in subsection (a) such as a criminal offense under section 11-412, or a violation of chapter 84 or 97. It is also unclear as to whose campaign account is subject to the requirement that the contributions be returned or escheat.

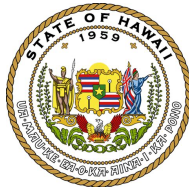
Further, subsection (c) may violate a person's right to due process of law under the Hawaii Constitution and the United States Constitution, and it may violate the Takings Clause of the United States Constitution. To explain, we will assume that subsection (c) is intended to apply to all contributions remaining in a person's campaign account on the date that the person is convicted or found in violation of subsection (a).

A person convicted or found in violation of subsection (a) will be subject to an administrative fine pursuant to section 11-410, HRS, or will be subject to a criminal penalty under the Hawaii Penal Code, or both. In addition, if this person owns a campaign account, by operation of subsection (c), the contributions in that campaign account must be returned to their respective contributors or escheat. This requirement in subsection (c) is automatic. Subsection (c) does not require that there be an administrative finding or court determination that the contributions remaining in the campaign account were obtained illegally. Even if the contributions were received in accordance with the law, the contributions will be taken. This appears to be a violation of the due process clause of article I, section 5, of the Hawaii Constitution: "No person shall be deprived of life, liberty or property without due process of law." It also appears

to be a violation of the Due Process Clause and Takings Clause of Article V of the United States Constitution: No person shall "be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation."

If the Committee decides to pass this bill, the Department recommends the Committee amend subsection (b) as indicated and delete subsection (c).

Thank you for the opportunity to provide these comments.



HAWAI'I STATE ETHICS COMMISSION

State of Hawai'i · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawai'i

Committee: Senate Committee on Judiciary
Bill Number: HB 2184 HD1
Hearing Date/Time: March 14, 2024, 9:30 a.m.
Re: Testimony of the Hawai'i State Ethics Commission **COMMENTING**
on HB 2184 HD1, Prohibiting Contributions from Persons Violating
Finance, Ethical, or Lobbying Laws.

Aloha Chair Rhoads, Vice Chair Gabbard, and Committee Members:

The Hawai'i State Ethics Commission (“Commission”) offers **comments** on HB 2184 HD1, which prohibits contributions from persons convicted or found in violation of various campaign finance, ethical, or lobbying offenses. The Commission has not yet had an opportunity to review this bill in a regularly scheduled sunshine meeting.

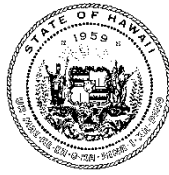
Commission staff note that there are a wide range of ethics and lobbying law violations, including fines for untimely disclosures. It may be excessive to prohibit campaign contributions from someone who filed a disclosure report a day or two late. Commission staff suggest amending this bill to indicate situations where the Commission expressly finds the ethics or lobbying law violation (chapters 84 and 97) to be egregious.

Mahalo for the opportunity to submit testimony on HB 2184 HD1.

Very truly yours,

/S/ Robert D. Harris

Robert D. Harris
Executive Director and General Counsel



STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

March 11, 2024

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

The Honorable Mike Gabbard, Vice Chair
Senate Committee on Judiciary

Members of the Senate Committee on Judiciary

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

SUBJECT: **Testimony on H.B. No. 2184, HD1, Relating to Campaign Finance.**

Thursday, March 14, 2024
9:30 a.m., Conference Room 016 & Videoconference

Thank you for the opportunity to testify on this bill. The Campaign Spending Commission (“Commission”) supports the intent of this bill and offers the following concerns about this bill.

This bill adds a new section to Chapter 11, Part XIII, of the Hawaii Revised Statutes (“HRS”), to permanently prohibit contributions from a person convicted of a campaign finance law violation or found in civil violation of an ethics or lobbying offense. The bill provides for the escheat of such contributions. The bill also provides for the return of funds to contributors or, if not returned within thirty days of conviction or found in civil violation, the escheat of funds in the person’s campaign account.

The Commission is concerned that permanently banning political contributions from a person convicted of a campaign finance offense may violate the First Amendment (free speech or associational freedom). The Commission is also concerned with predicating a contribution ban, permanent or temporary, upon a civil violation. Finally, there appears to be no required nexus between a person’s criminal conviction for a campaign finance offense or a civil violation of an ethics or lobbying offense, and the funds in the person’s campaign account that would justify the forced return of funds to contributors or the escheat of funds to the state. The Commission recommends that the Committee seek guidance from the Department of the Attorney General on this measure.



TESTIMONY FROM THE DEMOCRATIC PARTY OF HAWAII

SENATE COMMITTEE ON JUDICIARY

MARCH 14, 2024

HB 2184, SD2, RELATING TO CAMPAIGN FINANCE

POSITION: SUPPORT

The Democratic Party of Hawaii **supports** HB 2184, HD 1, relating to public financing for candidates to elected office. Pursuant to the “Government” section of the official Democratic Party of Hawaii platform, the party supports “government reforms that limit the influence of money on the creation or execution of policy. We support campaign finance reform that limits the amount of money organizations, corporations or individuals can donate to political campaigns. We support full public-financing of elections.”

Public integrity is paramount to government accountability.

Hawaii continues to be embroiled in public corruption scandals, following the bribery allegations that were levied against former Senate Majority Leader Kalani English and former State Representative Ty Cullen. Other public officials, such as employees at local permitting offices, have also recently been ensnared in bribery scandals, in some cases with connections to Milton Choy, the lobbyist who was responsible for coordinating the bribery scheme that Sen. English and Rep. Cullen became a part of. These cases show that we have a moral crisis in our public institutions and must do all we can to restore integrity to government.

Currently, a loophole in our state's campaign finance laws allows candidates, lobbyists, and other individuals who are convicted or found to be in violation of campaign spending, ethics, or lobbying offenses to keep control of the money they raised for their campaign accounts. This allows individuals who are convicted of bribery, for example, to not only remain in control of funds that may have been derived illicitly, but to spend such funds as they choose, such as by donating to other candidate committees or paying "kickbacks" in the form of compensation for goods and services.

This measure would close the loophole in question, rectifying a glaring flaw in our campaign finance system that undercuts basic government integrity. State leaders have been actively cracking down on loopholes in our campaign finance and ethics laws in response to high-level corruption scandals, such as by tightening regulations for candidates, contractors, and lobbyists. Surely, we should also enact this proposal to prevent individuals caught breaking significant campaign finance and ethics laws from sustaining ownership of campaign funds that may have been obtained unlawfully or may be used to further desecrate the very laws they violated.

Mahalo nui loa,

Kris Coffield

Co-Chair, Legislative Committee
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Abby Simmons

Co-Chair, Legislative Committee
(808) 352-6818
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HB-2184-HD-1

Submitted on: 3/8/2024 5:03:06 PM

Testimony for JDC on 3/14/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Scott Kidd	Individual	Support	Written Testimony Only

Comments:

I support this measure

HB-2184-HD-1

Submitted on: 3/10/2024 2:39:52 PM

Testimony for JDC on 3/14/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Greg Misakian	Individual	Support	Written Testimony Only

Comments:

I support HB2184 HD1.

Greg Misakian

HB-2184-HD-1

Submitted on: 3/13/2024 7:04:04 AM

Testimony for JDC on 3/14/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Glen Kagamida	Individual	Support	Written Testimony Only

Comments:

MAKES PERFECT SENSE.

MAHALO!

HB-2184-HD-1

Submitted on: 3/13/2024 9:42:06 PM

Testimony for JDC on 3/14/2024 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Corey Rosenlee	Individual	Support	Written Testimony Only

Comments:

****Testimony in Support of Hawaii House Bill 2184****

I am writing to express my enthusiastic support for House Bill 2184, which aims to fortify the integrity of campaign finance in Hawaii. In a climate where public trust is paramount, it is imperative that measures are in place to uphold transparency and accountability in our electoral processes.

This bill addresses a critical loophole in current state law, which permits individuals convicted of certain public corruption offenses to retain control over their campaign spending accounts and continue making political contributions. By prohibiting contributions from individuals convicted of campaign finance, lobbying, or ethical offenses, and redirecting any unlawfully acquired contributions to the campaign spending commission, this legislation takes a significant step towards ensuring that our campaign finance system remains free from undue influence and corruption.

The provisions outlined in House Bill 2184 serve to safeguard the integrity of our democratic institutions and foster greater public confidence in the electoral process. By holding accountable those who seek to undermine the principles of fairness and transparency, we affirm our commitment to upholding the highest standards of ethical conduct in governance.

I urge you to swiftly pass House Bill 2184 and demonstrate our state's unwavering dedication to the principles of honesty, integrity, and accountability in campaign finance.

Thank you for your attention to this vital matter.

Sincerely,

Corey Rosenlee