



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

S.B. NO. 466, S.D. 1, RELATING TO CAMPAIGN FINANCE.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Friday, March 17, 2023 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

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

Chair Tarnas and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purpose of this bill is to restrict noncandidate committees from making any expenditures or contributions, or disseminating any advertisements, on the day of any election nor during the two-week period preceding any election.

The restrictions proposed by this bill will be in violation of the First Amendment to the United States Constitution unless the restrictions survive exacting scrutiny. *Yamada v. Snipes*, 786 F.3d 1182 (9th Cir. 2015). To survive exacting scrutiny, "a law must bear a substantial relationship to a sufficiently important government interest." *Id. at 1194*.

The United States Supreme Court has recognized three interests as important government interests: (1) providing the electorate with information; (2) deterring actual corruption and avoiding any appearance of corruption; and (3) gathering the data necessary to enforce more substantive electioneering restrictions. *Id. at 1197*. "A regulation satisfies closely drawn scrutiny when 'the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgement of associated freedoms.'" *Id. at 1205*.

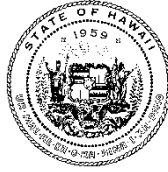
S. Stand. Comm. Rep. No. 719, indicates: "Your Committee finds that allowing noncandidate committees to make expenditures on or around the day of an election could create the perception that the expenditures are for the purpose of influencing the outcome of the election. Your Committee further finds that there are concerns of

growing apathy and lack of participation in the government process due partially to the lack of faith and trust in the government. This measure imposes limitations on the making of certain expenditures, which will help to restore confidence in state elections."

The state interests set forth in S. Stand. Comm. Rep. No. 719, do not appear to align with any of the three interests identified by the United States Supreme Court as important government interests. Therefore, as written, it is questionable whether the proposed law would survive the exacting scrutiny standard under the First Amendment.

Thank you for the opportunity to provide these comments.

KRISTIN E. IZUMI-NITAO
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STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

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March 16, 2023

TO: The Honorable David A. Tarnas, Chair
House Committee on Judiciary & Hawaiian Affairs

The Honorable Gregg Takayama, Vice Chair
House Committee on Judiciary & Hawaiian Affairs

Members of the House Committee on Judiciary & Hawaiian Affairs

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

SUBJECT: **Testimony on S.B. No. 466, SD 1, Relating to Campaign Finance.**

Friday, March 17, 2023
2:00 p.m., Conference Room 325 & Videoconference

Thank you for the opportunity to testify on this bill. The Campaign Spending Commission (“Commission”) offers the following comments on this bill.

This bill adds a new section to Chapter 11, Hawaii Revised Statutes (“HRS”), to prohibit a noncandidate committee from making any expenditure, contribution, or disseminate any advertisement on the day of any election and during the two-week period preceding any election. To the extent this bill applies to, and thus restricts, independent expenditures, the Commission believes the bill may be unconstitutional. The Commission suggests that the advice of the Attorney General be sought on this bill.

SB-466-SD-1

Submitted on: 3/15/2023 1:53:58 PM

Testimony for JHA on 3/17/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
lynne matusow	Individual	Support	Written Testimony Only

Comments:

I am in full support. We need to clean up unscrupulous campaigning.

SB-466-SD-1

Submitted on: 3/15/2023 7:41:46 PM

Testimony for JHA on 3/17/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Andrew Crossland	Individual	Support	Written Testimony Only

Comments:

I support this Bill.

SB-466-SD-1

Submitted on: 3/16/2023 3:24:26 PM

Testimony for JHA on 3/17/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Andrew Kagemoto	Individual	Support	Written Testimony Only

Comments:

Thank you for the opportunity to testify on this very important bill. I am in strong support.

Mahalo Chair Tarnas!