



STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION


235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

March 2, 2021

TO: The Honorable Mark M. Nakashima, Chair
House Committee on Judiciary & Hawaiian Affairs

The Honorable Scot Z. Matayoshi, 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: **Amended Testimony on H.B. No. 144, HD 1, Relating to Electioneering Communications**

Wednesday, March 3, 2021
2:00 p.m., Via Videoconference

Thank you for the opportunity to testify on this bill.¹ The Campaign Spending Commission (“Commission”) supports this bill.

This measure amends Hawaii Revised Statutes (“HRS”) §11-341 to increase the amount of aggregate expenditures from more than \$2,000 to more than \$5,000 before the filing of a statement of information for electioneering communications is required. The bill also amends the definition of “disclosure date” from the first date a person has made expenditures during that year to the first date the electioneering communication is publicly distributed, provided that more than \$5,000 has been spent.

The bill further amends the definition of “electioneering communication” by deleting “at a bulk rate” from advertisements sent by mail so that all advertisements sent by mail, be it bulk rate or first class, will be covered by the definition. Finally, the bill deletes items “that constitute expenditures by the expending organization” from the types of communications excluded from the definition of electioneering communication.

The changing of the disclosure date to when the advertisement runs, which triggers the need to file the statement of information, is timelier since contracts for these advertisements could occur weeks or months before the advertisements are publicly distributed. Changing the

¹ The companion bill is S.B. No. 404.

disclosure date to when the advertisement is published also addresses the concern of some legislators that disclosure date, as currently defined, reveals campaign strategy to the legislator's opponent. Also, increasing the threshold amount from \$2,000 to \$5,000 will reduce the burden on smaller candidate committees with less activity. Thus, committees that purchase only inexpensive social media advertisements, and a candidate for a house district who pays for only one district-wide mailer would probably not need to file statements of information.

In the 2020 elections (primary and general), 216 candidate committees filed 1,298 statements of information for electioneering communications, and 27 noncandidate committees filed 145 statements of information for electioneering communications. If the spending threshold had been increased from \$2,000 to \$5,000 in the 2020 elections, there would have been a 25% reduction (average) in candidate committee filings and a 23% reduction in noncandidate committee filings in the primary election and no reduction in noncandidate committee filings in the general election, where all noncandidate committee filing statements in the general election exceeded the \$5,000 threshold.

Finally, it makes no sense to consider advertisements mailed by bulk rate only, and not by any other postal rate, to be electioneering communications. Also, some committees have used the exclusion of items "that constitute expenditures by the expending organization" from the definition of electioneering communication, as a reason why those committees did not have to file statements of information. However, all committees are required to file statements of information for electioneering communications. HRS §§11-341(b)(2), 11-341(b)(3), & 11-341(b)(6). This exclusion is not needed since it cannot apply to committees already registered with the Commission and since the spending threshold for electioneering communications is more than \$1,000, any person filing a statement of information for electioneering communication will have to register with the Commission. **Thus, the Commission asks this Committee to restore the repeal of language in lines 8-9 on page 5 of the bill that was in the original bill submitted by the Commission but was removed by GVR.**

Hawaii
*Holding Power Accountable*Statement Before The
COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
Wednesday, March 3, 2021
2:00 PM
Via Videoconference, Conference Room 325in consideration of
HB 144, HD1
RELATING TO ELECTIONEERING COMMUNICATIONS.

Chair NAKASHIMA, Vice Chair MATAYOSHI, and Members of the House Judiciary & Hawaiian Affairs Committee

Common Cause Hawaii supports HB 144, HD1 with suggested amendments. HB 144, HD1 increases the monetary threshold that requires disclosure of electioneering communications, requires that disclosures of electioneering communications occur on the date the electioneering communications are publicly distributed, and classifies election advertisements sent by mail at any postal rate as electioneering communications.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening democracy through improving our campaign finance system with laws that amplify the voices of everyday Americans.

HB 144, HD1 provides in Section 1, at page 1, lines 4-8, that each person who makes an expenditure for electioneering communications in an aggregate amount of more than \$5,000 (increased from \$2,000) during any calendar year shall file with the commission a statement of information within twenty-four hours of each disclosure date as provided in Hawaii Revised Statutes (HRS) § 11-341. Common Cause Hawaii is concerned that raising the amount from \$2,000 to \$5,000 to trigger electioneering communication disclosure will result in smaller races, such as some county council races, not meeting the \$5,000 threshold to file the statement of information. Common Cause Hawaii suggests raising the limit from \$2,000 to \$3,000 for transparency to ensure that smaller, local races will also be subject to HRS § 11-341.

HB 144, HD1 also amends, at Section 1, the definition of “disclosure date” at page 3, lines 19-21, and page 4, lines 1-8 to the “date on which subsequent electioneering communication is publicly distributed” versus the original definition of “has made expenditures” on page 3, lines 20-21. Common Cause Hawaii is concerned with definitional change to “disclosure date”. This is because an electioneering communication may be contracted / purchased and then subsequently and serially distributed at a later time. If the disclosure date did not include dates on which a contract is executed, i.e., “has made expenditures”, a person could conceivably make their contracts for electioneering communications payable after the election and wait to disclose that spending, depriving the public of that information until it’s too late. Additionally, changing to “publicly distributed” could make administration more difficult and possibly lead to less timely disclosure in the last few weeks or days leading up to an election. Everyone who had previously been reporting their contracts for electioneering communications well ahead of the election, when their contracts were executed, would now be reporting all of those in together in that short period right before the election.

Transparency is better served if an electioneering communication statement of information is timely filed when contracted versus distributed. Common Cause Hawaii suggests keeping the original definition of “disclosure date”.

Thank you for the opportunity to testify in support of HB 144, HD1 with suggested amendments. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii

HB-144-HD-1

Submitted on: 3/1/2021 4:25:43 PM

Testimony for JHA on 3/3/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Quinn	Individual	Support	No

Comments:

Dear Honorable Committee Members,

Please support HB144.

Thank you,

Andrea Quinn