GOV. MSG. NO. 1270

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

June 27, 2022

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirty-First State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirty-First State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 27, 2022, the following bill was signed into law:

HB2416 HD2 SD1 CD1 RELATING TO CAMPAIGN SPENDING.
ACT 169

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

ORIGINAL

Approved by the Governor
on JUN 27 2022
HOUSE OF REPRESENTATIVES
THIRTY-FIRST LEGISLATURE, 2022
STATE OF HAWAII

ACT 169

H.B. NO. 2416 H.D. 2 S.D. 1 C.D. 1

A BILL FOR AN ACT

RELATING TO CAMPAIGN SPENDING.

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

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

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

The legislature also finds that the State's existing campaign finance laws fail to reveal the source of campaign spending money when the spending occurs by a 501(c)(4) nonprofit organization and the funds they raise through donations are used on campaign expenditures in an attempt to influence elections. Because the nonprofit organization is not required under existing law to disclose the identity of the donors making the donations for this purpose, there is a lack of transparency that fails to inform the public on who is trying to influence an election.

The legislature notes that in recent national and local elections, nonprofit organizations operating as noncandidate committees have used money to influence the outcome of elections. In addition, donors to these nonprofit organizations, because of their status as a social welfare organization, may not be aware that their donations are being used for political purposes. The Internal Revenue Service is currently not authorized to investigate these activities to ensure compliance, which allows 501(c)(4) nonprofit organizations operating as noncandidate committees to spend unregulated amounts of money on political activity without any

consequences or oversight, which conceivably could be above the political activity percentage threshold allowed.

The legislature additionally finds that there is a compelling state interest in monitoring these nonprofit organizations who are operating as noncandidate committees to ensure they are not improperly using funds to influence the political process. The government has a legitimate interest in ensuring campaign spending laws are followed when a 501(c)(4) nonprofit organization is operating as a noncandidate committee, which is furthered by these additional reporting requirements.

The legislature also notes that there are individuals and organizations that use 501(c)(4) nonprofit organizations as shell organizations to pass through large donations. The legislature believes that requiring 501(c)(4) nonprofit organizations operating as noncandidate committees to disclose the name and address of donors who make a donation individually or in an aggregate of more than $10,000, will assist the campaign spending commission in discovering those nonprofit organizations being used to funnel large amounts of funds as donations to influence elections.

The purpose of this Act is to enhance existing campaign spending disclosure requirements to ensure that if a 501(c)(4) nonprofit organization is operating as a noncandidate committee, its campaign spending activities are disclosed to the electorate. Because organizations that meet campaign spending thresholds are currently required to disclose the identities of their contributors, under the enhanced disclosure requirements contained in this Act, organizations that meet the campaign spending thresholds as a noncandidate committee will also be required to disclose the identities of their donors.

SECTION 2. Chapter 11, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§11- Donors; consent; notice.** (a) A nonprofit organization subject to this chapter and operating as a noncandidate committee may use a donation for electioneering communications, independent expenditures, or contributions only upon receipt of written consent from the donor to use the donation for electioneering communications, independent expenditures, or contributions.

(b) A nonprofit organization subject to this chapter and operating as a noncandidate committee shall provide written notice to donors that the donor's name and address may be reported pursuant to this chapter in a public document if the donor provides written consent to use the donation for electioneering communications, independent expenditures, or contributions.

(c) If the donor fails to provide written consent that the donation may be used for electioneering communications, independent expenditures, or contributions, the nonprofit organization shall, within thirty days of receipt of the donation, transmit to the donor a written confirmation by the nonprofit organization's highest ranking official that the donation will not be used for electioneering communications, independent expenditures, or contributions; and the name and address of the donor will not be reported by the nonprofit organization pursuant to this chapter.

(d) Only a nonprofit organization subject to this chapter and operating as a noncandidate committee shall be subject to the reporting requirements of this section."

SECTION 3. Section 11-302, Hawaii Revised Statutes, is amended by adding four new definitions to be appropriately inserted and to read as follows:

""Donation" means all transfers of money, credit or debit card transactions, online payments, payments made through a third party, paid personal services, or transfers of any other thing of value to a nonprofit organization.

"Donor" means a person that makes a donation to a nonprofit organization subject to this chapter and operating as a noncandidate committee.

"Electioneering communication":

(1) Means any advertisement that is broadcast from a cable, satellite, television, or radio broadcast station; published in any periodical or newspaper or by electronic means; or sent by mail, and that:

(A) Refers to a clearly identifiable candidate;

(B) Is made, or scheduled to be made, either within thirty days before a primary or initial special election or within sixty days before a general or special election; and

(C) Is not susceptible to any reasonable interpretation other than as an appeal to vote for or against a specific candidate; and

(2) Shall not include communications:

(A) In a news story or editorial disseminated by any broadcast station, publisher of periodicals or newspapers, or by electronic means, unless the facilities are owned or controlled by a candidate, candidate committee, or noncandidate committee;

(B) In house bulletins; or

(C) That constitute a candidate debate or forum, or solely promote a debate or forum and are made by or on behalf of the person or organization sponsoring the debate or forum.

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

SECTION 4. Section 11-335, Hawaii Revised Statutes, is amended to read as follows:

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

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

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

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

(A) Contributions received;

(B) Contributions made;

(C) Expenditures; and

(D) Other receipts;

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

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

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

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

(A) All the information is not on file, the contribution shall be returned to the contributor within thirty days of deposit; and

(B) A noncandidate committee making only independent expenditures receives a contribution of more than $10,000 in the aggregate in an election period from an entity other than an individual, for-profit business entity, or labor union, then the schedule shall include:

(i) The internet address where the contributing entity's disclosure report can be publicly accessed, if the contributing entity is subject to state or federal disclosure reporting requirements regarding the source of the contributing entity's funds;

(ii) The name, address, occupation, and employer of each funding source that contributed $100 or more in the aggregate in an election period to that contributing entity; or

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

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

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

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

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

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

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

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

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

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

(7) The date of disposition of a durable asset, value at the time of disposition, method of disposition, and name and address of the person receiving the asset[~~.~~]; and

(8) For donations received by a nonprofit organization subject to this chapter and operating as a noncandidate committee, the amount and date of deposit of each donation received and the name and address of each donor making a donation individually or aggregating more than $10,000 during an election period, which was not previously reported pursuant to this section; provided that a schedule filed pursuant to this section shall not include a donor if the donor has not provided consent pursuant to section 11- .

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

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

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

SECTION 5. Section 11-338, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

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

(2) Name of the candidate, candidate committee, or noncandidate committee making or receiving the contribution; provided that, for noncandidate committees making only independent expenditures, if a late contribution greater than $5,000 in the aggregate

is received from an entity other than an individual, for-profit business entity, or labor union, then the report shall include:

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

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

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

(3) The amount of the contribution received;

(4) The amount of the contribution made;

(5) The contributor's aggregate contributions to the candidate, candidate committee, or noncandidate committee; [~~and~~]

(6) The purpose, if any, to which the contribution will be applied, including, for contributions to a noncandidate committee, the name of any candidate supported, opposed, or clearly identified[~~.~~]; and

(7) For a nonprofit organization filing a late contribution report, the amount and date of deposit of each donation received and the name and address of each donor making a donation individually or aggregating more than $10,000 during an election period, which was not previously reported pursuant to section 11-335; provided that a schedule filed pursuant to this section shall not include a donor if the donor has not provided consent pursuant to section 11- ."

SECTION 6. Section 11-341, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

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

(1) The name of the person making the expenditure, name of any person or entity sharing or exercising discretion

or control over the person, and the custodian of the books and accounts of the person making the expenditure;

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

(3) The state of incorporation or formation and principal address of the noncandidate committee, business entity, or organization or for an individual, the name, address, occupation, and employer of the individual making the expenditure;

(4) The amount of each expenditure during the period covered by the statement of information and the identification of the person to whom the expenditure was made;

(5) The elections to which the electioneering communications pertain and the names of any clearly identifiable candidates and whether those candidates are supported or opposed;

(6) If the expenditures were made by a noncandidate committee, the names and addresses of all persons who contributed to the noncandidate committee for the purpose of publishing or broadcasting the electioneering communications;

(7) If the expenditures were made by an organization other than a noncandidate committee, the names and addresses of all persons who contributed to the organization for the purpose of publishing or broadcasting the electioneering communications;

(8) If the expenditures were made by a nonprofit organization, the amount and date of the deposit of each donation received and the name and address of each donor making a donation individually or aggregating more than $10,000 during an election period, which was not previously reported pursuant to section 11-335; provided that a schedule filed pursuant to this section shall not include a donor's name or address if the donor has not provided consent pursuant to section 11- ;

[~~(8)~~] (9) Whether any electioneering communication is made in coordination, cooperation, or concert with or at the request or suggestion of any candidate, candidate committee, or noncandidate committee, or agent of any candidate if any, and if so, the identification of the candidate, candidate committee, or noncandidate committee, or agent involved; and

[~~(9)~~] (10) The three top contributors as required under section 11-393, if applicable."

2. By amending subsection (d) to read:

"(d) For purposes of this section:

"Disclosure date" means, for every calendar year, the first date [~~by which a person has made expenditures during that same year of more than $1,000 in the aggregate for electioneering communications.~~

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

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

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

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

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

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

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

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

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

during the calendar year on which an electioneering communication is publicly distributed, and the date on which any

subsequent electioneering communication is publicly distributed; provided that the person making the electioneering communication has made expenditures for electioneering communications of more than $2,000 in the aggregate. "Disclosure date" for mailers means the date the mailers are first mailed.

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

SECTION 7. Section 11-363, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) Expenditures or disbursements for electioneering communications [~~as defined in section 11-341~~], or any other coordinated activity made by any person for the benefit of a candidate in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate committee, or their agents, shall be considered to be a contribution to the candidate and expenditure by the candidate."

2. By amending subsection (c) to read:

"(c) [~~"Coordinated~~] For purposes of this section, "coordinated activity" means:

(1) The payment by any person in cooperation, consultation, or concert with, at the request of, or pursuant to, any general or particular understanding with a candidate, candidate committee, the party of a candidate, or an agent of a candidate, candidate committee, or the party of a candidate;

(2) The payment by any person for the production, dissemination, distribution, or republication of any written, graphic, or other form of campaign material, in whole or in part, prepared by a candidate, candidate committee, or noncandidate committee, or an agent of a candidate, candidate committee, or noncandidate committee; or

(3) Any payment by any person or contract for any electioneering communication[~~, as defined in section 11-341,~~] where the payment is coordinated with a candidate, candidate committee, the party of the candidate, or an agent of a candidate, candidate committee, or the party of the candidate."

SECTION 8. Section 11-393, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) For purposes of this [~~part,~~] section, "top contributor" means a contributor who has contributed an aggregate amount of $10,000 or more to a noncandidate committee within a twelve-month period [~~prior to~~] before the purchase of an advertisement."

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect on January 1, 2023.

APPROVED this 27th day of June, 2022

GOVERNOR OF THE STATE OF HAWAII

HB No. 2416, HD 2, SD 1, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 3, 2022
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2022.

Scott K. Saiki
Speaker
House of Representatives

Brian L. Takeshita
Chief Clerk
House of Representatives

H.B. No. 2416, H.D. 2, S.D. 1, C.D. 1

THE SENATE OF THE STATE OF HAWAI'I

Date: May 3, 2022
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirty-First Legislature of the State of Hawai'i, Regular Session of 2022.

President of the Senate

Clerk of the Senate