

KRISTIN E. IZUMI-NITAO
EXECUTIVE DIRECTOR



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STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION
235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

March 23, 2015

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

The Honorable Joy A. San Buenaventura, Vice Chair
House Committee on Judiciary

Members of the House Committee on Judiciary

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

SUBJECT: **Testimony on S.B. No. 1344, S.D. 1, Relating to Campaign Spending**

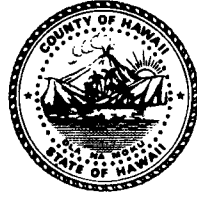
Tuesday, March 24, 2015
2:00 p.m., Conference Room 325

Thank you for the opportunity to testify on this bill. The Campaign Spending Commission ("Commission") supports the intent of the bill and offers the following comments.

This bill amends several sections of Hawaii Revised Statutes ("HRS") chapter 11 that relate to noncandidate committees. The purpose of the bill is to require an independent expenditure committee ("IE Committee") to disclose the true source of funding of its contributions that aggregate more than \$10,000 (and late contributions aggregating more than \$5,000), which may not be readily apparent from the name of the organization that is identified as a contributor to the IE Committee. In the alternative, the bill would require the IE Committee to acknowledge that a contributing entity is not subject to any state or federal disclosure law regarding the source of that contributing entity's funding. This additional layer of disclosure for IE Committees would not apply if the contributor is an individual, for-profit business entity, or labor union. The Commission certainly supports more transparency in campaign finance – particularly, since we believe this bill is addressing the political spending of dark money groups which include 501(c)(4) and 501(c)(6) non-profit organizations.

If this measure is passed, the Commission would need until December 31, 2015 to modify its electronic filing system to accommodate the additional reporting requirements.

COUNTY OF HAWAI‘I



STATE OF HAWAI‘I

RESOLUTION NO. 112 15

A RESOLUTION URGING THE HAWAI‘I STATE LEGISLATURE TO PASS SENATE BILL NO. 1344 AND HOUSE BILL NO. 1491, RELATING TO CAMPAIGN SPENDING.

WHEREAS, Hawai‘i Revised Statutes, Section 11-301, states that the purpose of the State’s campaign finance laws “is to provide transparency in the campaign finance process. Any ambiguity in the provisions of this part shall be construed to support transparency”; and

WHEREAS, State law requires each contributor who has contributed an aggregate amount of more than \$100 to a noncandidate committee since the last election to disclose that contributor’s name, address, employer and occupation; and

WHEREAS, during the 2014 election cycle, contributions of approximately \$8 million were received by 29 noncandidate committees making independent expenditures (“SuperPACs”); and

WHEREAS, during the 2014 election cycle, numerous SuperPACs reported donations from other SuperPACs, but did not disclose the source of the funds, leaving voters unaware of the origin and intent of the contributors; and

WHEREAS, additional reporting requirements for SuperPACs as provided in Senate Bill No. 1344 and House Bill No. 1491 will increase transparency and accountability; deter corruption; and strengthen confidence in the election process by informing the public about the true source of campaign contributions made to SuperPACs; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF HAWAI‘I that the Hawai‘i State Legislature is urged to pass Senate Bill No. 1344 and House Bill No. 1491.

BE IT FURTHER RESOLVED that the Council supports increased transparency and accountability in the electoral process regarding the funding sources for SuperPACs.

BE IT FURTHER RESOLVED that the Council opposes any amendment to undermine the original intent of Senate Bill No. 1344 and House Bill No. 1491.

BE IT FINALLY RESOLVED that the County Clerk shall transmit a copy of this resolution to the Honorable Senate President Donna Mercado Kim; the Honorable House Speaker Joseph M. Souki; the Honorable Senator Gilbert S.C. Keith-Agaran; and the Honorable Representative Karl Rhoads.

Dated at Kona, Hawai'i, this 18th day of March, 2015.

INTRODUCED BY:

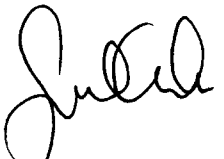


 COUNCIL MEMBER, COUNTY OF HAWAI'I

COUNTY COUNCIL
 County of Hawai'i
 Hilo, Hawai'i

I hereby certify that the foregoing RESOLUTION was by the vote indicated to the right hereof adopted by the COUNCIL of the County of Hawai'i on March 18, 2015.

ATTEST:



COUNTY CLERK



CHAIRPERSON & PRESIDING OFFICER

ROLL CALL VOTE

	AYES	NOES	ABS	EX
CHUNG	X			
DAVID	X			
EOFF	X			
ILAGAN	X			
KANUHA	X			
ONISHI		X		
PALEKA	X			
POINDEXTER	X			
WILLE	X			
	8	1	0	0

Reference: C-178/Waived GREDC

RESOLUTION NO. 112 15

LATE

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
SEVENTY-EIGHTH LEGISLATURE, 2015**

ON THE FOLLOWING MEASURE:

S.B. NO. 1344, S.D. 1, RELATING TO CAMPAIGN SPENDING.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, March 24, 2015

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Deirdre Marie-Iha, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General supports the intent of this measure, which adds an additional level of disclosure to several portions of Hawaii's campaign finance laws to further assist voters to "follow the money" and determine the individuals, organizations, or businesses seeking to influence their vote. The Department raises a general concern regarding the bill's legislative history and makes several recommendations to improve the bill's chances of withstanding a constitutional challenge and achieving its intent. We urge the Committee to pass this bill, but only if these suggestions are incorporated.

We support the purpose of this bill, which is to make available to the electorate additional information about the funding source(s) of SuperPACs (noncandidate committees that make only independent expenditures) when they expend funds to influence the outcome of Hawaii's elections. Current law only requires SuperPACs to disclose the *names* of the organizations or individuals that have contributed money to them. This bill requires SuperPACs to disclose additional information to aid voters in determining the sources of funding behind those contributors to the SuperPACs.

This bill may be challenged as being unconstitutional under the First Amendment. Campaign finance disclosure laws are generally viewed as being constitutional under current federal law, if the government can show the necessity of such laws. *To aid in the defense of this bill, the Department strongly suggests that the debates and reports that will comprise the bill's legislative history include a discussion of the justification for this bill, similar to that included in the bill's purpose section when it was introduced.* Inclusion of Hawaii's experience with

SuperPAC money during the 2012 and 2014 elections may be persuasive in supporting the need for the additional disclosure required by the bill. The legislative history included thus far is helpful toward that end but may not be sufficient on its own. Ideally, the committee report would include the substantive text that appeared in the purpose section of the bill as introduced, bolstered with some additional specific data from Hawaii's recent elections.

When this bill was heard in the Senate, we had several significant substantive concerns. Fortunately, most of these concerns were addressed in the S.D. 1, though the legislative history still needs to be strengthened, as detailed above. We make several drafting suggestions for functionality and internal consistency:

- The wording added into section 11-335(b)(1)(B)(i) (page 5, lines 3-8) should be made consistent with the similar addition made on page 3. There is a comma missing after "accessed" and the "of" should be "if." (Page 5, line 5). The end of 11-335(b)(1)(B)(i) should read ". . . the source of the contributing entity's funds;" *not* ". . . the source of the contribution[.]" (Page 5, lines 7-8). We note that this second change is necessary to effect the bill's apparent intent. Otherwise a SuperPAC may circumvent the provision by claiming the initial contributor (which is already disclosed under existing law) is the source of the "contribution." This bill would require disclosure at one level further back.
- The "aggregate" requirement in section 11-335(b)(1)(B)(ii) needs to specify that it is in an election period. Currently it says "aggregate" but not in an election period. (Page 5, line 11).
- The word "concerning" in new section 11-338(b)(2)(C) (page 8, line 20) should be replaced with "regarding" in order to make it consistent with the similar amendments made elsewhere in the bill.

Finally, for internal consistency, we suggest one drafting change to the addition made to section 11-338(b), HRS. The bill requires that for late contributions exceeding \$10,000, a SuperPAC must either (a) identify a website where the contributor's funding sources can be identified, (b) provide the name, address, occupation and employer of each funding source of more than \$100 in the aggregate, or (c) acknowledge that the contributing entity is not subject to any state or federal disclosure reporting requirements regarding the source of the contributing

entity's funds. (Page 8, lines 3-21). These additions are made to section 11-338(b), HRS. But the \$100 threshold in option (b) is internally inconsistent with the threshold for reporting the name, address, occupation, and employer of contributors in section 11-338(a), which is \$500. To make the new wording internally consistent, the threshold for option (b) should be raised from \$100 to \$500. (Page 8, line 16).

The Department supports the intent of this bill and urges the Committee to pass the bill but only if these concerns, which are intended to strengthen the bill, are fully addressed. Thank you for the opportunity to testify.

From the office of -
Council Member
District 4 – Puna Makai



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GREGGOR ILAGAN

25 Aupuni Street, Hilo, Hawai'i 96720

March 23, 2015

The Honorable Karl Rhoads, Chair
And Members of the Committee on Judiciary

Dear Chair Rhoads and Committee members,

Thank you for the opportunity to provide testimony in support of Senate Bill 1344, SD1. I am grateful for your support of increased disclosure in campaign finance by recommending approval of companion bill HB 1491 in the session.

I appreciate the reasonable amendments that have been made to this bill to strengthen it in the face of any potential constitutional challenge.

Again, thank you for your consideration.

Sincerely,

Greggor Ilagan

Greggor Ilagan
Council Member



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COMMITTEE ON JUDICIARY

Tuesday March 24, 2015, 2 p.m. Room 325
SB1344 SD1: Relating to Campaign Spending
TESTIMONY

Beppie Shapiro, League of Women Voters of Hawaii

Chair Rhoads, Vice-Chair Buenaventura, and Committee Members:

The League of Women Voters of Hawaii supports SB1344 SD1. This measure would require SuperPacs to disclose whether their contributors which are not businesses, labor unions or individuals (e.g. other PACS or SuperPacs) are subject to state or federal disclosure requirements, and provide the internet address where that entity's report can be accessed or, alternatively, the name, address, occupation, and employer of each funding source to that entity.

The Introduction to SB1344 persuasively laid out the rationale for requiring the disclosure of more information on the sources of money expended by SuperPacs. Following Supreme Court decisions like Citizens United, and further court decisions, citizens are left with few options to control the unregulated flow of very large contributions to and expenditures by “independent” committees. These outside contributions are commonly presumed to influence not only the outcome of elections (by purchasing ads and generating other media coverage) but also, unfortunately, access to and possibly even actions of elected politicians. Citizens and good government watchdogs hope to identify and publicize the identity and political agenda of large contributors, in order to generate scrutiny of actions by elected officials which might be affected by those political agenda.

At present state disclosure laws do not allow this level of identification and scrutiny. SB1344 SD1 proposes increased detailed disclosures by SuperPACs, including details of the SuperPAC’s own organization and more information on the otherwise somewhat mysterious category of contributors to the SuperPAC which are not either individuals, labor unions, or businesses. Such



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contributors are often other SuperPACs, creating a confusing chain of semi-anonymous organizations which hide the identities and political agenda behind the contributions.

SB1344 SD1 promises to provide some clues into this opaque system of campaign finance. Astute and dedicated observers could use the information required by this measure to try to unravel the chain of contributions and the agenda inspiring them. This analysis could assist in holding office-holders accountable to the public for their actions relevant to the agenda of major contributors.

We urge you to pass this bill. Thank you for the opportunity to submit testimony.