
A BILL FOR AN ACT

RELATING TO CAMPAIGN SPENDING.

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

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

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



1 The legislature further finds that the State's existing
2 campaign finance laws fail to reveal the true source of dark
3 money campaign spending. Dark money campaign spending occurs
4 when an organization, such as a section 501(c)(4) nonprofit
5 organization, raises funds through donations, then uses the
6 donations on campaign expenditures in an attempt to influence
7 elections. It is dark money because the organization is not
8 required, under existing law, to disclose the identity of the
9 donors making the donations. As a result, there is a lack of
10 transparency that fails to inform the public on who is trying to
11 influence an election.

12 The legislature notes that in recent national and local
13 elections, nonprofit organizations have used dark money to
14 influence the outcome of elections. In addition, donors to
15 these nonprofit organizations may not be aware that their
16 donations are being used for political purposes. The
17 legislature finds that section 501(c)(4) nonprofit organizations
18 are tax-exempt as a social welfare organization, must not be
19 organized for profit, and must be operated exclusively to
20 promote social welfare. The Internal Revenue Service describes
21 "exclusively promoting social welfare" as operating primarily to



1 further the common good and general welfare of the community.
2 The promotion of social welfare does not include direct or
3 indirect participation or intervention in political campaigns on
4 behalf of or in opposition to any candidate for public office.

5 However, the Internal Revenue Code states that social
6 welfare organizations may engage in some political activities,
7 so long as those activities are not their primary activity.
8 Arguably, this means that an organization can use 49.99 per cent
9 of its funds to engage in political activity and still maintain
10 its tax-exempt status, all while hiding its donors' involvement
11 in political campaigning. Also, the Internal Revenue Service is
12 currently not authorized to use any funds to investigate these
13 activities to ensure compliance. This allows section 501(c)(4)
14 nonprofit organizations to engage in and spend unregulated
15 amounts of money on political activity without any consequences
16 or oversight, conceivably well above the political activity
17 percentage threshold allowed, which is currently happening in
18 national and local politics.

19 The legislature also finds that there is a compelling state
20 interest in monitoring these nonprofit organizations to ensure
21 they are not improperly using funds to influence the political



1 process. The government has legitimate interests in
2 safeguarding democracy and ensuring campaign spending laws are
3 followed, which is furthered by these additional reporting
4 requirements.

5 The purpose of this Act is to enhance existing campaign
6 spending disclosure requirements to ensure that the true source
7 of campaign spending is disclosed to the electorate. This Act
8 also enhances existing disclosure requirements to deter
9 corruption or the appearance of corruption and to enable the
10 gathering of data necessary to detect violations of campaign
11 finance laws. Organizations that meet campaign spending
12 thresholds are currently required to disclose the identities of
13 their contributors. Under the enhanced disclosure requirements
14 contained in this Act, organizations that meet campaign spending
15 thresholds will also be required to disclose the identities of
16 their donors.

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

20 "§11- Donors; consent; notice. (a) Nonprofit
21 organizations may use a donation for electioneering



1 communications, independent expenditures, or contributions only
2 upon receipt of written consent from the donor to use the
3 donation for electioneering communications, independent
4 expenditures, or contributions.

5 (b) Nonprofit organizations subject to this chapter shall
6 provide written notice to donors that the donor's name and
7 address may be reported pursuant to this chapter in a public
8 document if the donor provides written consent to use the
9 donation for electioneering communications, independent
10 expenditures, or contributions.

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



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

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

8 "Donor" means a person that makes a donation to a nonprofit
9 organization.

10 "Electioneering communication":

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

15 (A) Refers to a clearly identifiable candidate;

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



- 1 (C) Is not susceptible to any reasonable
- 2 interpretation other than as an appeal to vote
- 3 for or against a specific candidate; and
- 4 (2) Shall not include communications:
 - 5 (A) In a news story or editorial disseminated by any
 - 6 broadcast station or publisher of periodicals or
 - 7 newspapers, unless the facilities are owned or
 - 8 controlled by a candidate, candidate committee,
 - 9 or noncandidate committee;
 - 10 (B) In house bulletins; or
 - 11 (C) That constitute a candidate debate or forum, or
 - 12 solely promote a debate or forum and are made by
 - 13 or on behalf of the person sponsoring the debate
 - 14 or forum.

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

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

20 "**§11-335 Noncandidate committee reports.** (a) The
 21 authorized person in the case of a party, or treasurer in the



1 case of a noncandidate committee that is not a party, shall file
2 preliminary, final, and supplemental reports that disclose the
3 following information:

- 4 (1) The noncandidate committee's name and address;
- 5 (2) The cash on hand at the beginning of the reporting
6 period and election period;
- 7 (3) The reporting period and election period aggregate
8 totals for each of the following categories:
 - 9 (A) Contributions received;
 - 10 (B) Contributions made;
 - 11 (C) Expenditures; and
 - 12 (D) Other receipts;
- 13 (4) The cash on hand at the end of the reporting period;
14 and
- 15 (5) The surplus or deficit at the end of the reporting
16 period.

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

- 19 (1) The amount and date of deposit of each contribution
20 received and the name, address, occupation, and
21 employer of each contributor making a contribution



1 aggregating more than \$100 during an election period,
2 which was not previously reported[+] pursuant to this
3 section; provided that if:

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

7 (B) A noncandidate committee making only independent
8 expenditures receives a contribution of more than
9 \$10,000 in the aggregate in an election period
10 from an entity other than an individual, for-
11 profit business entity, or labor union, then the
12 schedule shall include:

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

19 (ii) The name, address, occupation, and employer
20 of each funding source that contributed \$100



- 1 or more in the aggregate in an election
2 period to that contributing entity; or
3 (iii) An acknowledgment that the contributing
4 entity is not subject to any state or
5 federal disclosure reporting requirements
6 regarding the source of the contributing
7 entity's funds;
- 8 (2) The amount and date of each contribution made and the
9 name and address of the candidate, candidate
10 committee, or noncandidate committee to which the
11 contribution was made;
- 12 (3) All expenditures, including the name and address of
13 each payee and the amount, date, and purpose of each
14 expenditure; provided that:
- 15 (A) Expenditures for advertisements or electioneering
16 communications shall include the names of the
17 candidates supported, opposed, or clearly
18 identified;
- 19 (B) Expenditures for consultants, advertising
20 agencies and similar firms, credit card payments,
21 and salaries shall be itemized to permit a



- 1 reasonable person to determine the ultimate
2 intended recipient of the expenditure and its
3 purpose;
- 4 (C) Independent expenditures shall include the name
5 of any candidate supported, opposed, or clearly
6 identified; and
- 7 (D) The purpose of an independent expenditure shall
8 include the name of the candidate who is
9 supported or opposed by the expenditure, and
10 whether the expenditure supports or opposes the
11 candidate;
- 12 (4) For noncandidate committees making only independent
13 expenditures, certification that no expenditures have
14 been coordinated with a candidate, candidate
15 committee, or any agent of a candidate or candidate
16 committee;
- 17 (5) The amount, date of deposit, and description of other
18 receipts and the name and address of the source of
19 each of the other receipts;
- 20 (6) A description of each durable asset, the date of
21 acquisition, value at the time of acquisition, and the



1 name and address of the vendor or contributor of the
2 asset; [~~and~~]

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

7 (8) For donations received by a nonprofit organization,
8 the amount and date of deposit of each donation
9 received and the name and address of each donor making
10 a donation aggregating more than \$100 during an
11 election period, which was not previously reported
12 pursuant to this section; provided that a schedule
13 filed pursuant to this section shall not include a
14 donor if the donor has not provided consent pursuant
15 to section 11- .

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

18 (d) The authorized person in the case of a party, or
19 treasurer in the case of a noncandidate committee that is not a
20 party, shall file a late contribution report as provided in
21 section 11-338 if the committee receives late contributions from



1 any person aggregating more than \$500 or makes late
2 contributions aggregating more than \$500.

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

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

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

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

11 (2) Name of the candidate, candidate committee, or
12 noncandidate committee making or receiving the
13 contribution; provided that, for noncandidate
14 committees making only independent expenditures, if a
15 late contribution greater than \$5,000 in the aggregate
16 is received from an entity other than an individual,
17 for-profit business entity, or labor union, then the
18 report shall include:

19 (A) The internet address where the contributing
20 entity's disclosure report can be publicly
21 accessed, if the contributing entity is subject



- 1 to any state or federal disclosure reporting
2 requirements regarding the source of the
3 contributing entity's funds;
- 4 (B) The name, address, occupation, and employer of
5 each funding source of more than \$100 in the
6 aggregate to that contributing entity; or
- 7 (C) An acknowledgment that the contributing entity is
8 not subject to any state or federal disclosure
9 reporting requirements regarding the source of
10 the contributing entity's funds;
- 11 (3) The amount of the contribution received;
- 12 (4) The amount of the contribution made;
- 13 (5) The contributor's aggregate contributions to the
14 candidate, candidate committee, or noncandidate
15 committee; [~~and~~]
- 16 (6) The purpose, if any, to which the contribution will be
17 applied, including, for contributions to a
18 noncandidate committee, the name of any candidate
19 supported, opposed, or clearly identified[-]; and
- 20 (7) For a nonprofit organization filing a late
21 contribution report, the amount and date of deposit of



1 each donation received and the name and address of
2 each donor making a donation aggregating more than
3 \$100 during an election period, which was not
4 previously reported pursuant to section 11-335;
5 provided that a schedule filed pursuant to this
6 section shall not include a donor if the donor has not
7 provided consent pursuant to section 11- ."

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

10 1. By amending subsection (b) to read:

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

13 (1) The name of the person making the expenditure, name of
14 any person or entity sharing or exercising discretion
15 or control over the person, and the custodian of the
16 books and accounts of the person making the
17 expenditure;

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



- 1 (3) The state of incorporation or formation and principal
2 address of the noncandidate committee, business
3 entity, or organization or for an individual, the
4 name, address, occupation, and employer of the
5 individual making the expenditure;
- 6 (4) The amount of each expenditure during the period
7 covered by the statement of information and the
8 identification of the person to whom the expenditure
9 was made;
- 10 (5) The elections to which the electioneering
11 communications pertain and the names of any clearly
12 identifiable candidates and whether those candidates
13 are supported or opposed;
- 14 (6) [~~If the expenditures were made by a noncandidate~~
15 ~~committee, the]~~ The names and addresses of [all
16 ~~persons who contributed to the noncandidate committee~~
17 ~~for the purpose of publishing or broadcasting the~~
18 ~~electioneering communications;]~~ the top three
19 contributors contributing an aggregate of more than
20 \$100 in the preceding twelve-month period;



- 1 (7) ~~[If the expenditures were made by an organization~~
2 ~~other than a noncandidate committee, the names and~~
3 ~~addresses of all persons who contributed to the~~
4 ~~organization for the purpose of publishing or~~
5 ~~broadcasting the electioneering communications,]~~ The
6 names and addresses of the top three donors donating
7 an aggregate of more than \$100 in the preceding
8 twelve-month period; provided that a statement of
9 information shall not include a donor's name or
10 address if the donor has not provided consent pursuant
11 to section 11- ;
- 12 (8) Whether any electioneering communication is made in
13 coordination, cooperation, or concert with or at the
14 request or suggestion of any candidate, candidate
15 committee, or noncandidate committee, or agent of any
16 candidate if any, and if so, the identification of the
17 candidate, candidate committee, or noncandidate
18 committee, or agent involved; and
- 19 (9) The three top contributors as required under section
20 11-393, if applicable."
- 21 2. By amending subsection (d) to read:



1 "(d) For purposes of this section:

2 "Disclosure date" means, for every calendar year, the first
3 date ~~[by which a person has made expenditures during that same~~
4 ~~year of more than \$1,000 in the aggregate for electioneering~~
5 ~~communications.] electioneering communications of an aggregate~~
6 ~~of more than \$1,000 are publicly distributed.~~

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

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

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

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

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

20 ~~(1) In a news story or editorial disseminated by any~~
21 ~~broadcast station or publisher of periodicals or~~



1 ~~newspapers, unless the facilities are owned or~~
2 ~~controlled by a candidate, candidate committee, or~~
3 ~~noncandidate committee;~~
4 ~~(2) That constitute actual expenditures by the expending~~
5 ~~organization;~~
6 ~~(3) In house bulletins; or~~
7 ~~(4) That constitute a candidate debate or forum, or solely~~
8 ~~promote a debate or forum and are made by or on behalf~~
9 ~~of the person sponsoring the debate or forum.]~~

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

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

14 1. By amending subsection (a) to read:

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



1 2. By amending subsection (c) to read:

2 "(c) [~~"Coordinated~~] For purposes of this section,

3 "coordinated activity" means:

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

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

17 (3) Any payment by any person or contract for any
18 electioneering communication [~~as defined in section~~
19 ~~11-341,~~] where the payment is coordinated with a
20 candidate, candidate committee, the party of the



1 candidate, or an agent of a candidate, candidate
2 committee, or the party of the candidate."

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

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

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

12 SECTION 10. This Act shall take effect on July 1, 2112.

13



Report Title:

Campaign Spending; Nonprofit Organizations; Electioneering
Communication; Donors; Disclosures

Description:

Informs the public of the true sources of dark money
contributions by requiring section 501(c)(4) nonprofit
organizations to disclose the name and address of donors who
donate an aggregate of more than \$100, with certain exceptions.
Adds definitions. Effective 7/1/2112. (HD2)

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not legislation or evidence of legislative intent.*

