



March 13, 2024

The Honorable David A. Tarnas
Chair, House Committee on Judiciary & Hawaiian Affairs
Hawaii State Legislature

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

Re: Statement in support of S.B. 2381, SD2, with recommended amendments

Dear Chair Tarnas, Vice Chair Takayama, and Members of the Committee,

Campaign Legal Center (CLC) respectfully submits this statement supporting and recommending amendments to S.B. 2381, SD2, a bill to establish comprehensive public financing for state and county candidates. CLC is a nonpartisan, nonprofit organization dedicated to protecting and strengthening democracy across all levels of government. Since the organization's founding in 2002, CLC has participated in every major campaign finance case before the U.S. Supreme Court, as well as in numerous other federal and state court cases. Our work promotes every American's right to participate in the democratic process.

CLC is a longtime proponent of public financing for campaigns, and we commend the Committee for pursuing an updated program for Hawaii. Adopting a strengthened public financing program could broaden public engagement in democracy and amplify the voices of regular Hawaii residents in the electoral process.

To strengthen S.B. 2381 SD2, CLC recommends the following amendments:

- **Permit certified candidates to qualify for supplemental funds.** Under the bill, a certified candidate receives a primary election grant and, if the candidate advances, a general election grant. To ensure competitive funding for participating candidates, the Committee should consider providing supplemental funds to candidates who collect additional qualifying contributions, similar to the Maine Clean Elections Act.¹
- **Provide the Campaign Spending Commission (CSC) with sufficient resources.** Dedicated staff and funding are critical to the success and integrity of any public financing program. The Committee should consider providing CSC with additional

¹ See Me. Stat. tit. 21-A, § 1125(8-B)-(8-E). Participation in the Maine Clean Election Act program rebounded after the program was amended in 2015 to include supplemental grants, which ensure candidates can access additional funds in particularly competitive races. MAINE CITIZENS FOR CLEAN ELECTIONS, CLEAN ELECTION PARTICIPATION RATES AND OUTCOMES: 2016 ELECTIONS, <https://perma.cc/A62B-RSDW> (Feb. 6, 2017).

permanent full-time staff and funding to help develop and administer the program, similar to prior versions of SB 2381.

- **Allow certified candidates to pay campaign debts after the day of the election.** Under the bill, certified candidates are prohibited from spending their grant funds “outside the applicable campaign period” and must return their leftover public funds within specified periods after their campaign ends. The Committee should consider amending these commonsense requirements to explicitly allow candidates to pay their legitimate campaign debts with public funds before having to return the leftover amounts, which is standard in other public financing programs.²
- **Allow seed money to be used for legitimate campaign costs.** The bill requires that a candidate’s seed money be used only for determining the candidate’s viability for public financing, and then reduces the amount of the candidate’s public grant by their seed money total. Because the seed money total reduces the public campaign funds a candidate may access, the Committee should consider allowing seed money to be used for legitimate campaign costs, similar to seed money provisions in other programs.³
- **Provide CSC discretion to assess penalties.** The bill requires a candidate who violates contribution restrictions to be fined an amount equal to three times the amount of public funds received. Similar to Hawaii law under H.R.S. § 11-410(a), the Committee should consider giving CSC the discretion to determine an appropriate penalty amount—such as *up to* three times the amount of public funds received—based on mitigating or aggravating factors.
- **Provide alternatives for insufficient funding.** Instead of making the program inoperative when public funds are insufficient for full funding for all covered elections, the Committee should consider alternatives, like additional appropriation requests by CSC, reduced grants as determined by CSC, or other options to sustain the program.⁴
- **Remove restrictions on candidates after the election.** Because candidates who participate in the program must comply with program requirements regardless of their prior participation in the program, the post-election restrictions on elected candidates—seemingly for contributions that would apply to a subsequent election—appear to be unnecessary. The Committee should consider removing them.

CLC respectfully urges the Committee to adopt our recommendations and support S.B. 2381, SD2. We would be happy to assist the Committee in crafting these amendments. Thank you for the opportunity to testify in support of this important legislation.

Respectfully submitted,

/s/

Aaron McKean
Senior Legal Counsel

² See, e.g., Ariz. Rev. Stat. § 16-953 (requiring return of public monies “above an amount sufficient to pay any unpaid bills”).

³ See, e.g., Me. Stat. tit. 21-A, § 1125(2-A); see also Ariz. Rev. Stat. § 16-945.

⁴ See, e.g., Me Stat. tit. 21-A, § 1124(4); see also Ariz. Rev. Stat. § 16-954.