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* *Pro hac vice* application filed August 27, 2010

In the United States District Court
for the District of Hawaii

Jimmy Yamada, Russell Stewart, and A-1 A-Lectrician, Inc., ***Plaintiffs*** *v.* **Paul Kuramoto,** in his official capacity as chair and member of the Hawaii Campaign Spending Commission; Steven Olbrich, in his official capacity as vice chair and member of the Hawaii Campaign Spending Commission; Gino Gabrio, Dean Robb, and Michael Weaver, in their official capacities as members of the Hawaii Campaign Spending Commission, ***Defendants***	Civil Action No. ____

Verified Complaint

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1. Plaintiffs Jimmy Yamada, Russell Stewart, and A-1 A-Lectrician, Inc. ("A-1") file this verified complaint.

2. This action begins with the principle of freedom of speech. Government may limit or otherwise regulate speech only when it has the enumerated power to do so and only when the exercise of that power is constitutional.

3. This Court has jurisdiction, because this action arises under the First and Fourteenth Amendments to the United States Constitution. *See* 28 U.S.C. § 1331 (1980).

4. This Court also has jurisdiction, because this action arises under Section 1 of the Civil Rights Act of 1871, 42 U.S.C. § 1983 (1996). *See* 28 U.S.C. § 1343.a (1979).

5. This Court also has jurisdiction under the Declaratory Judgment Act. *See id.* §§ 2201 (1993), 2202 (1948).

6. Venue is proper in this Court, because all Defendants, in their official capacities, reside in the District of Hawaii. *See id.* § 1391.b.1 (1992). Venue is also proper in this Court, because "a substantial part of the events or omissions giving rise to the claim[s]" occurs in the District of Hawaii. *See id.* § 1391.b.2.

I. Background

A. Plaintiffs

1. Jimmy Yamada and Russell Stewart

7. Plaintiffs Jimmy Yamada and Russell Stewart are Hawaii residents. Yamada is A-1's chief executive officer. Yamada and Stewart each seek to contribute $2500 to the Aloha Family Alliance – Political Action Committee ("AFA-PAC") before the 2010 general election.

8. AFA-PAC is a Hawaii political committee that does only independent spending for political speech.[1] It does not make direct contributions to, *cf. Buckley v. Valeo,* 424 U.S. 1, 24 n.23 (1976), or coordinate any spending for political speech with, any candidate for state or local office in Hawaii, the candidate's agents, or the candidate's committee, *cf. id.* at 78, *quoted in FEC v. Survival Educ. Fund, Inc.,* 65 F.3d 285, 294 (2d Cir. 1995), or a state or local political party in Hawaii. *Cf. McConnell v. FEC,* 540 U.S. 93, 219-23 (2003), *overruled on other grounds, Citizens United v. FEC,* 558 U.S. ____, ____, 130 S.Ct. 876,

[1] *See generally* ORGANIZATIONAL REPORT, *available at* https://nc.csc.hawaii.gov/NCFSPublic/ORG_Report.php?OR_ID=20274 (all Internet sites visited Aug. 27, 2010)).

896-914 (2010).[2] AFA-PAC wants to receive Yamada's and Stewart's contributions, but the contributions would violate Hawaii law.[3]

2. A-1

9. Plaintiff A-1, a for-profit Hawaii corporation with offices on Oahu and the Big Island, is an electrical-construction organization.[4] It is not connected with any political candidate or political party. Nor is it connected with any political committee. *Cf.* 2 U.S.C. § 431.7 (2002) (defining "connected organization" under federal law).

10. Consistent with direction from the Hawaii Campaign Spending Commission ("CSC"), A-1 many years ago registered itself as a noncandidate committee and since then has reported the contributions it makes and its spending for political speech to the CSC. The registered noncandidate committee is "A-1 A-Lectrician, Inc.,"[5] so to

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[2] Although it is not material, AFA-PAC does not make direct contributions to *any* political committee or coordinate the speech at issue here with *any* candidate, the candidate's agents, or the candidate's committee, or with *any* political party.

[3] *Cf. infra* Part I.C.5.

[4] *See* HISTORY (VC Exh. 2), *available at* http://a-1-a.com/index.php/about-us.

[5] *See* A-1 A-LECTRICIAN, INC., *available at*

be clear: A-1 did not form a noncandidate committee and register the noncandidate committee with the CSC. Rather, A-1 registered the whole corporation as a noncandidate committee.[6]

3. A-1 Speech

11. Before the 2010 general election, A-1 seeks to contribute $250 to each of the following Hawaii state-legislature candidates: Chris Baron, Corinne Ching, David Chang, Carole Kaapu, Garner Shimizu, Beth Fukumoto, Shaun Kawakami, Sam Curtis, and Michael Magaoay. However, A-1 provides service on state- and county-government jobs it has done in Hawaii, which makes A-1 a government contractor not just while an A-1 service technician is performing service but instead during the life span of each service contract – from inception until all payment is made and all issues are resolved. In addition, A-1 expects to have a new job as a state- or county-government contractor in Hawaii in September or October 2010, which will also make A-1 a government contractor during the life span of the contract.

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https://nc.csc.hawaii.gov/NCFSPublic/ReportDetail.php?RNO=NC20001 .

[6] *Cf. infra* Part I.C.1.

12. Each contract is with Hawaii state or county government, or a state- or county-government department or agency, for "the rendition of personal services, the buying of property, or furnishing of any material, supplies, or equipment" to the state or county government, or a state- or county-government department or agency. *Cf.* HAW. REV. STAT. § 11-HH.a (2010). Money the Hawaii legislature appropriates pays for what A-1 does under each contract. *Cf. id.* No one who has such a contract may contribute to a candidate or noncandidate committee during the life of the contract. *See id.* § 11-HH.a.1.[7]

13. A-1 has a policy not to "buy favors" from elected officials, and it wants to make contributions, while it is a government contractor, to candidates – such as Baron, Ching, Chang, Kaapu, Shimizu, Fukumoto, Kawakami, Curtis, and Magaoay – who do *not* decide whether A-1 receives contracts and who do not oversee the contracts. Hawaii's ban on candidate and noncandidate committees' receiving contributions from government contractors means A-1 must constantly keep track not only of whether it has government-construction jobs but also of whether a single A-1 service technician is somewhere providing some minor

[7] *Infra* Part I.C.4.

service on a previous A-1 government-construction job. Each contract for minor service – though important to A-1 – exists not just while the technician is working on the site but instead during the life span of the contract for this minor service. A-1 no longer wants to bear the bureaucratic burden of having to make sure it makes contributions only when there is no contract with state or county government in Hawaii.

14. A-1 also seeks to do three newspaper ads[8] in September and October 2010 and has gathered price information for them. None of this speech contains express advocacy as defined in *Buckley*, 424 U.S. at 44 & n. 52, 80, *vis-à-vis* state or local office in Hawaii.[9] Nevertheless, much of it has characteristics significant under constitutional and Hawaii law.

15. The speech will have clearly identified candidates for state or local office in Hawaii.

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[8] VC Exhs. 3-5.

[9] Although it is not material, none of this speech contains express advocacy as defined *Buckley vis-à-vis any* office.

16. The speech will be targeted to the relevant electorate in that it can be received in areas where individuals can vote for the clearly identified candidates.

17. The speech will run in the 30 days before a primary or 60 days before a general election ("30-60 Day Windows").

18. The speech will *not* be broadcast, cable, or satellite ("Broadcast") speech.[10]

4. What A-1 Does and Does Not Do

19. To pay for its newspaper ads, A-1 will spend more than $2000 in 2010. *Cf.* HAW. REV. STAT. § 11-Z (2010).

20. A-1, does not, however, coordinate any of the speech at issue here with any candidate for state or local office in Hawaii, the candidate's agents, or the candidate's committee, *cf. Buckley,* at 78, *quoted in Survival Educ. Fund,* 65 F.3d at 294, or a state or local political party in Hawaii. *Cf. McConnell,* 540 U.S. at 219-23.[11]

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[10] *Cf. infra* Part I.C.2-3.

[11] Although it is not material, A-1 does not coordinate the speech at issue here with *any* candidate, the candidate's agents, or the candidate's committee, or with *any* political party.

21. Nor is there at issue here a contribution A-1 receives that (1) is earmarked for a Hawaii political committee, *i.e.,* an *indirect* contribution to a Hawaii political committee, *cf. Buckley,* 424 U.S. at 24 n.23, 78, or (2) "will be converted to an expenditure[,]" *Survival Educ. Fund,* 65 F.3d at 295, *i.e.,* express advocacy as defined in *Buckley,* 424 U.S. at 44 n.52, 80, *vis-à-vis* state or local office in Hawaii.[12]

B. Defendants

22. Defendants Paul Kuramoto and Steven Olbrich are the CSC chair and vice chair, respectively. They are also CSC members, as are Defendants Gino Gabrio, Dean Robb, and Michael Weaver.[13] Hawaii law vests Defendants, all of whom are sued in their official capacities,

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[12] Although it is not material, there is not at issue here a contribution A-1 receives that (1) is earmarked for *any* political committee, *i.e.,* an *indirect* contribution to *any* political committee or (2) "will be converted to an expenditure[,]" *i.e.,* express advocacy as defined in *Buckley, vis-à-vis any* office.

[13] COMMISSIONERS, *available at* http://hawaii.gov/campaign/commissioners. The Hawaii Campaign Spending Commission is different from the Hawaii Elections Commission. *See* Commissioners, *available at* http://hawaii.gov/elections/ec/index_html#ec-members.

with authority *vis-à-vis* the law at issue in this action. They act under color of law. *See, e.g.,* HAW. REV. STAT. §§ 11-F, AAA-LLL (2010).[14]

C. Hawaii Law

23. Plaintiffs reasonably believe that if they do not follow Hawaii law, Defendants will subject them to enforcement and prosecution leading to civil liabilities and criminal penalties. *See id.*; HAW. CODE R. § 2-14.1-3.b (2002). Even if there were no civil liabilities or criminal penalties, being cleared provides little comfort to those whom government has wrung through a process that becomes the punishment. *See, e.g., FEC v. Wisconsin Right to Life, Inc.,* 551 U.S. 449, 468 n.5 (2007) ("*WRTL II*"). "The right of free speech can be trampled or chilled even if convictions are never obtained" and civil liabilities are never imposed. *FEC v. Hall-Tyner Election Campaign Comm.,* 678 F.2d 416, 422 n.15 (2d Cir. 1982), *cert. denied,* 459 U.S. 1145 (1983).

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[14] This law took effect July 7, 2010. HAWAII STATE LEGISLATURE: 2010 REGULAR SESSION, HB 2003 HD3 SD2, *available at* http://www.capitol.hawaii.gov/session2010/lists/measure_indiv.aspx?billtype=HB&billnumber=2003.

24. In five instances,[15] Hawaii law chills[16] particular Plaintiffs from proceeding with their speech. They will do their speech only if the Court grants the requested relief.

1. Regulation of A-1 as a Noncandidate Committee

25. First, under Hawaii law, with exceptions that do not apply here:

> "Noncandidate committee" means an organization, association, party, or individual that has the *purpose* of making or receiving contributions, making *expenditures,* or incurring financial obligations to *influence* the nomination for election, or the election, of any candidate to office, or for or against any question or issue on the ballot[.]

HAW. REV. STAT. § 11-B (2010) (emphasis added). Under Hawaii regulations:

> "Noncandidate committee" means any committee organized without the knowledge or consent of a candidate, and for the purpose of making *expenditures* or accepting contributions [*for the purpose of influencing*] *to influence* the nomination or

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[15] *Infra* Parts I.C.1-5.

[16] The term "pre-enforcement" applies before civil enforcement or criminal prosecution. The term "chill" is a proper subset of "pre-enforcement" and applies in the First Amendment context when speakers, fearing civil enforcement or criminal prosecution, will not engage in their speech. *See, e.g., New Hampshire Right to Life PAC v. Gardner,* 99 F.3d 8, 13-14 (1st Cir. 1996) ("*NHRL*"). Thus, "pre-enforcement" and "chill" apply to all of Plaintiffs' speech.

> election of a candidate, or to advocate the support or defeat of any question or issue that has been certified to appear on an election ballot.

HAW. CODE R. § 2-14.1-2 (2002) (emphasis added) (brackets in original).

Hawaii law defines "contribution" and "expenditure" with exceptions not material here:

> "Contribution" means:
>
> (1) A gift, subscription, deposit of money or anything of value, or cancellation of a debt or legal obligation and includes the purchase of tickets to fundraisers, for the purpose of:
>
> > (A) Influencing the nomination for election, or the election, of any person to office;
> >
> > (B) Influencing the outcome of any question or issue that has been certified to appear on the ballot at the next applicable election; or
> >
> > (C) Use by any candidate committee or noncandidate committee for the purpose of subparagraph (A) or (B);
>
> (2) The payment, by any person or party other than a candidate, candidate committee, or noncandidate committee, of compensation for the services of another person that are rendered to the candidate, candidate committee, or noncandidate committee without charge or at an unreasonably low charge for a purpose listed in paragraph (1);
>
> (3) A contract, promise, or agreement to make a contribution; or

(4) Any loans or advances that are not documented or disclosed to the commission as provided in section 11-SS; ...

"Expenditure" means:

(1) Any purchase or transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, or payment incurred or made, or the use or consumption of a nonmonetary contribution *for the purpose of:*

(A) *Influencing* the nomination for election, or the election, of any person seeking nomination for election or election to office, whether or not the person has filed the person's nomination papers;

(B) *Influencing* the outcome of any question or issue that has been certified to appear on the ballot at the next applicable election; or

(C) Use by any party for the purposes set out in subparagraph (A) or (B);

(2) Any payment, by any person other than a candidate, candidate committee, or noncandidate committee, of compensation for the services of another person that are rendered to the candidate, candidate committee, or noncandidate committee for any of the purposes mentioned in paragraph (1)(A); provided that payment under this paragraph shall include provision of services without charge; or

(3) The expenditure by a candidate of the candidate's own funds for the purposes set out in paragraph (1)(A).

HAW. REV. STAT. § 11-B (emphasis added).

26. A-1 is not under the control of a candidate or candidates for state or local office in Hawaii.[17] In addition, A-1's organizational documents – *i.e.,* its articles of association[18] and by-laws[19] – and public statements[20] do not indicate it has the major purpose of nominating or electing a candidate or candidates for state or local office in Hawaii, and A-1 does not spend the majority of its money on contributions to, or independent expenditures for, a candidate or candidates for state or local office in Hawaii. "Independent expenditure" means express advocacy as defined in *Buckley* and not coordinated with a candidate, a candidate's committee, a candidate's agent, or a party, which is the standard under the Constitution. 424 U.S. at 39-51; *McConnell,* 540 U.S. at 219-23; *cf.* 2 U.S.C. § 431.17 (following *Buckley* by limiting the statutory independent-expenditure definition to express advocacy).[21]

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[17] Although it is not material, A-1 is not under the control of *any* candidate or candidates.

[18] VC Exh. 6.

[19] VC Exh. 7.

[20] *E.g.,* VC Exh. 2.

[21] Although it is not material, nothing in A-1's organizational documents or in its public statements indicates that A-1 has the major

27. Nevertheless, A-1 reasonably fears that if it does its 2010 speech as a noncandidate committee, it will have to comply with treasurer-designation, bank-account, recordkeeping, and extensive-reporting requirements. These are among the panoply of political-committee burdens that Hawaii *via* its noncandidate-committee definition imposes on noncandidate committees, including:

- Registration (including treasurer-designation and bank-account) and termination requirements. HAW. REV. STAT. §§ 11-J, M, O, DD.a (2010); HAW. CODE R. § 2-14.1-7 (2002).

- Recordkeeping requirements. HAW. REV. STAT. § 11-M, DD.b (2010); HAW. CODE R. § 2-14.1-6 (2002).

- Extensive reporting requirements. HAW. REV. STAT. §§ 11-L, Q, T, U, V, W, X, Y, DD.c (2010); HAW. CODE R. §§ 2-14.1-3.c-d, 2-14.1-17.1 (2002).

- Limits on contributions received. HAW. REV. STAT. §§ 11-KK, LL.a, NN, QQ, TT (2010), and

- Contribution-source bans. *Id.* §§ 11-EE, FF, HH, II (2010); 2 U.S.C. §§ 441b.a, 441b.b.2 (2002) (national banks and national corporations), 441e (2002) (foreign nationals).

See also HAW. CODE R. § 2-14.1-3 (2002) (citing the statutory reporting requirements).

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purpose of nominating or electing *any* candidate or candidates, and A-1 does not spend the majority of its money on contributions to, or independent expenditures for, *any* candidate or candidates.

28. A-1 no longer wants to bear the burdens of being a noncandidate committee.

29. Therefore, Plaintiff A-1 seeks a declaratory judgment that the noncandidate-committee and expenditure definitions, HAW. REV. STAT. § 11-B; HAW. CODE R. § 2-14.1-2, are unconstitutional as applied to A-1's speech and facially. A-1 further asks that the Court preliminarily and then later permanently enjoin their enforcement.

30. This will allow A-1 to do its speech, and materially similar speech in the future, without being a noncandidate committee, and without fear of enforcement or prosecution.

2. Electioneering Communication Reporting Requirements

31. Second, under Hawaii law:

> "Electioneering communication" means any *advertisement* that is broadcast from a cable, satellite, television, or radio broadcast station; *published in any periodical or newspaper; or sent by mail at a bulk rate,* and that:
>
> (1) Refers to a clearly identifiable candidate;
>
> (2) Is made, or scheduled to be made, either within thirty days prior to a primary or initial special election or within sixty days prior to 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.*

HAW. REV. STAT. § 11-Z.c (emphasis added).

> "Advertisement" means any communication, excluding sundry items such as bumper stickers, that:
>
> > (1) Identifies a candidate directly or by implication, or identifies an issue or question that will appear on the ballot at the next applicable election; and
> >
> > (2) *Advocates or supports* the nomination, opposition, or election of the candidate, or advocates the passage or defeat of the issue or question on the ballot.

Id. § 11-B (emphasis added). Hawaii then excludes "expenditures" from the electioneering-communication definition. *Id.* § 11-Z.c.2 (second (2) in Section 11-Z.c).

32. A regulation further defines "electioneering communication" as:

> Any paid *advertising* that *a reasonable person* could interpret as *having no other purpose other than to directly associate* a candidate with a *specific effort to influence* a candidate's nomination, for election or election, or defeat in a nomination for election or election, shall be reported to the commission as required to be reported under [the] Hawaii Revised Statutes.

HAW. CODE R. § 2-14.1-24.1 (2002) (emphasis added).

Hawaii then regulates electioneering communications by requiring reporting:

> (a) Each person who makes a disbursement for electioneering communications in an aggregate amount of more than $2,000 during any calendar year shall file with the commission a statement of information *within twenty-four hours* of each disclosure date provided in this section.
>
> (b) Each statement of information shall contain the following:
>
> > (1) The name of the person making the disbursement, name of any person or entity sharing or exercising discretion or control over such person, and the custodian of the books and accounts of the person making the disbursement;
> >
> > (2) The state of incorporation and principal place of business or, for an individual, the address of the person making the disbursement;
> >
> > (3) The amount of each disbursement during the period covered by the statement and the identification of the person to whom the disbursement was made;
> >
> > (4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified;
> >
> > (5) If the disbursements were made by a candidate committee or noncandidate committee, the names and addresses of all persons who contributed to the candidate committee or noncandidate committee for the purpose of publishing or broadcasting the electioneering communications;

> (6) If the disbursements were made by an organization other than a candidate committee or noncandidate committee, the names and addresses of all persons who contributed to the organization for the purpose of publishing or broadcasting the electioneering communications; and
>
> (7) Whether or not 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, a candidate committee or a noncandidate committee, or agent involved.
>
> (c) For purposes of this section:
>
> "Disclosure date" means, for every calendar year, the first date by which a person has made disbursements during that same year of more than $2,000 in the aggregate for electioneering communications, and the date of any subsequent disbursements by that person for electioneering communications.

HAW. REV. STAT. § 11-Z (emphasis added).

33. In the weeks before elections, public interest in public-policy issues is at its peak. At this time, organizations such as A-1 with limited resources can most effectively communicate with the public about, and advocate positions on, issues. *See Citizens United,* 130 S.Ct. at 895.

34. A-1 reasonably fears its speech is an "electioneering communication" and is subject to reporting that will burden A-1's limited resources. This is particularly true of 24 hour reporting, which takes up precious resources. A-1 has limited staff. Having to devote time to preparing and filing reports, particularly 24 hour reports, is a severe burden on A-1's resources, including its time to devote to its business.

35. Therefore, Plaintiff A-1 seeks a declaratory judgment that the electioneering-communication and advertising definitions, and the electioneering-communication reporting requirements, HAW. REV. STAT. §§ 11-Z.c, 11-B; HAW. CODE R. § 2-14.1-24.1, are unconstitutional as applied to A-1's speech and facially. A-1 further asks that the Court preliminarily and then later permanently enjoin their enforcement.

36. This will allow A-1 to do its speech, and materially similar speech in the future, without having to comply with the reporting requirements and without fear of enforcement or prosecution.

3. Advertising Attribution and Disclaimer Requirements

37. Third, under Hawaii law:

(a) Any *advertisement* shall contain:

> (1) The name and address of the candidate, candidate committee, noncandidate committee, or other person paying for the advertisement; and
>
> (2) A notice in a prominent location stating either that:
>
> > (A) The advertisement is published, broadcast, televised, or circulated with the approval and authority of the candidate; provided that an advertisement paid for by a candidate, candidate committee, or ballot issue committee does not need to include the notice; or
> >
> > (B) The advertisement is published, broadcast, televised, or circulated without the approval and authority of the candidate.

HAW. REV. STAT. § 11-YY (2010) (emphasis added).

38. Although A-1's newspaper ads will comply with the attribution requirements, *see id.* § 11-YY.a.1, they will not comply with the disclaimer requirements. *See id.* § 11-YY.a.2. That is, they will include A-1's name and address, but they will not say they are published without the candidates' approval or authority. A-1 does not want to distract readers with this information, or make them think the speech is electoral-campaign speech when it is not. Nor does A-1 want Hawaii to regulate the content of the speech itself.

39. Therefore, Plaintiff A-1 seeks a declaratory judgment that the advertising definition and disclaimer requirements, HAW. REV.

STAT. §§ 11-B, 11-YYa.2.b, are unconstitutional as applied to A-1's speech and facially. A-1 further asks that the Court preliminarily and then later permanently enjoin their enforcement.

40. This will allow A-1 to do its speech, and materially similar speech in the future, without having to comply with the disclaimer requirement and without fear of enforcement or prosecution.

4. Ban on Contributions by Government Contractors

41. Fourth, under Hawaii law:

> (a) It shall be unlawful for any person who enters into any contract with the State, any of the counties, or any department or agency thereof either for the rendition of personal services, the buying of property, or furnishing of any material, supplies, or equipment to the State, any of the counties, any department or agency thereof, or for selling any land or building to the State, any of the counties, or any department or agency thereof, if payment for the performance of the contract or payment for material, supplies, equipment, land, property, or building is to be made in whole or in part from funds appropriated by the legislative body, at any time between the execution of the contract through the completion of the contract, to:
>
> > (1) Directly or indirectly make any contribution, or promise expressly or impliedly to make any contribution to any candidate committee or noncandidate committee, or to any candidate or to any person for any political purpose or use; or
> >
> > (2) Knowingly solicit any contribution from any person

> for any purpose during any period.
>
> (b) Except as provided in subsection (a), this section does not prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, any noncandidate committee by any person other than the state or county contractor for the purpose of influencing the nomination for election, or the election of any person to office.
>
> (c) For purposes of this section, "completion of the contract" means that the parties to the government contract have either terminated the contract prior to completion of performance or fully performed the duties and obligations under the contract, no disputes relating to the performance and payment remain under the contract, and all disputed claims have been adjudicated and are final.

HAW. REV. STAT. § 11-HH.

42. Section 11-HH bans the contributions A-1 wants to make to candidates in 2010. These candidates do *not* decide whether A-1 receives government contracts. Nor do they oversee the contracts.

43. Therefore, Plaintiff A-1 seeks a declaratory judgment that the ban on government contractors' making contributions, HAW. REV. STAT. § 11-HH, is unconstitutional *as applied* to A-1's speech. A-1 further asks that the Court preliminarily and then later permanently enjoin its enforcement.

44. This will allow A-1 to do its speech, and materially similar speech in the future, without violating the ban and without fear of enforcement or prosecution.

5. Political Committee Contribution Limit

45. Fifth, the $2500 contributions Yamada and Stewart each want to make to AFA-PAC exceed Hawaii's $1000 per-election limit on contributions AFA-PAC receives, even if Yamada and Stewart divide their contributions between the September primary and November general election. *See* HAW. REV. STAT. § 11-KK.

46. Therefore, Plaintiffs Yamada and Stewart seek a declaratory judgment that the limit on contributions noncandidate committees receive, HAW. REV. STAT. § 11-KK, is unconstitutional *as applied* to Yamada's and Stewart's speech. Yamada and Stewart further ask that the Court preliminarily and then later permanently enjoin its enforcement.

47. This will allow Yamada and Stewart to do their speech, and materially similar speech in the future, without violating the contribution limit and without fear of enforcement or prosecution.

D. Future Speech

48. In materially similar situations in the future, Plaintiffs intend to do speech materially similar to all of their planned speech such that Hawaii law will apply to them as it does now.

49. Plaintiffs will plan their future speech as the need arises, keeping in mind that they often cannot know well in advance of when they want to speak, *see WRTL II,* 551 U.S. at 462-63, and that "timing is of the essence in politics. It is almost impossible to predict the political future; and when an event occurs, it is often necessary to have one's voice heard promptly, if it is to be considered at all." *Shuttlesworth v. City of Birmingham,* 394 U.S. 147, 163 (1969) (Harlan, J., concurring).

50. Despite *Citizens United,* Plaintiffs find themselves in the position of having to consult campaign-finance lawyers or seek declaratory rulings "before discussing the most salient political issues of our day." 130 S.Ct. at 889.

II. Discussion

51. Counts 2 to 8[22] assert various provisions of Hawaii law fail the appropriate level of scrutiny. Counts 1[23] and 9[24] assert law challenged in Counts 2 to 6, but not 7 or 8, is unconstitutionally vague, and therefore overbroad, both as applied to speech and facially. Count 9 then asserts the law challenged in Counts 2 to 6, but not 7 or 8, is facially unconstitutional.

A. Justiciability

1. Standing

a. Constitutional Standing

52. Plaintiffs' injury is the chill to speech caused by Defendants' prospective enforcement of Hawaii law or prosecution of Yamada, Stewart, and A-1. The relief they seek will redress this chill, thereby allowing them to do their speech without fear of enforcement or prosecution. Therefore, they have standing to seek relief from the chill. *See ACLU of Nevada v. Heller,* 378 F.3d 979, 983 (9th Cir. 2004) (citing

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[22] *Infra* Parts II.E-I.

[23] *Infra* Part II.D.

[24] *Infra* Part II.J.

Arizona Right to Life PAC v. Bayless, 320 F.3d 1002, 1006 (9th Cir. 2003)); *California Pro-Life Council v. Getman,* 328 F.3d 1088, 1093-95 (9th Cir. 2003) ("*CPLC I*").

b. Prudential Standing

53. Plaintiffs have prudential standing, because their injuries are in the "zone of interests" the challenged law regulates. *FEC v. Akins,* 524 U.S. 11, 20 (1998) ("protected or regulated" (quoting *National Credit Union Admin. v. First Nat. Bank & Trust Co.,* 522 U.S. 479, 488 (1998))).

2. Ripeness

54. Pre-enforcement challenges are ripe when they address laws chilling political speech. *See CPLC I,* 328 F.3d at 1093-95; *Arizona Right to Life PAC,* 320 F.3d at 1007 n.6 (citing *LSO, Ltd. v. Stroh,* 205 F.3d 1146, 1154-55 (9th Cir. 2000)). Therefore, Plaintiffs' claims are ripe.

B. Irreparable Harm

55. The "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns,* 427 U.S. 347, 373 (1976). So unless Plaintiffs receive the relief

they request, they will suffer irreparable harm. There is no adequate remedy at law. *See id.*

C. First Principles

1. The Limited Power of Government

56. Freedom of speech is the norm, not the exception. *See, e.g., Citizens United v. FEC,* 558 U.S. ____, ____, 130 S.Ct. 876, 911 (2010) ("more speech, not less, is the governing rule"); *Buckley v. Valeo,* 424 U.S. 1, 14-15 (1976).

57. The framers established government with the consent of the governed, *see, e.g.,* U.S. CONST. preamble (1787) ("We the people of the United States"); HAWAII CONST. preamble ("We, the people of Hawaii, grateful for Divine Guidance"), and government has only those powers that the governed surrendered to it in the first place.

2. The First and Fourteenth Amendments as Restrictions on the Already Limited Power of Government

58. This power – including the "constitutional power of Congress to regulate federal elections[,]" *Buckley*, 424 U.S. at 13 & n.16, and each state's parallel power over its own, though not other states', elections, *see, e.g., North Carolina Right to Life, Inc. v. Leake,* 525 F.3d 274, 281

(4th Cir. 2008) ("*NCRL III*") (citing *Buckley,* 424 U.S. at 13); HAWAII CONST. art. II – is further constrained by other law, including the First and Fourteenth Amendments.

a. Vagueness

59. Under the Fourteenth Amendment, U.S. CONST. amend. XIV (1868), state law regulating political speech must not be vague. *See Citizens United,* 130 S.Ct. at 889 (quoting *Connally v. General Constr. Co.,* 269 U. S. 385, 391 (1926)).

60. To avoid the problems vagueness causes, law regulating political speech must also be simple and concise. *See id.*

b. Overbreadth

61. The absence of vagueness, however, does not make law regulating political speech constitutional. *See WRTL II,* 551 U.S. at 479 (quoting *FEC v. Massachusetts Citizens for Life, Inc.,* 479 U.S. 238, 263 (1986) ("*MCFL*")).

62. Even non-vague law regulating political speech must comply with the First Amendment, which provides that

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the

> people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. CONST. amend. I (1791). The First Amendment guards against overbreadth, *Buckley,* 424 U.S. at 80 ("impermissibly broad"),[25] and applies to the states through the Fourteenth Amendment, regardless of whether it is through the Due Process Clause, *Gitlow v. New York,* 268 U.S. 652, 666 (1925) (freedom of speech and freedom of the press), or the Privileges and Immunities Clause. *Cf. McDonald v. City of Chicago,* 561 U.S. ____, ____, 130 S.Ct. 3020, 3059, 3062-63 (2010) (Thomas, J., concurring in part and concurring in the judgment).

63. The government's power to regulate *elections* is an exception to the norm of freedom of speech. *See Citizens Against Rent Control v. City of Berkeley,* 454 U.S. 290, 296-97 (1981). The power to regulate *elections* is also self-limiting. To ensure law is not "impermissibly broad," *Buckley* establishes that government may, subject to further inquiry,[26] have the power to regulate donations received and spending

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[25] One should not confuse this overbreadth with the substantial overbreadth courts address in assessing facial unconstitutionality. *Infra* Part II.J.

[26] *E.g., infra* Parts II.F, G.

for political speech only when they are "unambiguously related to the campaign of a particular ... candidate" in the jurisdiction in question, 424 U.S. at 80, or "unambiguously campaign related" for short. *Id.* at 81. This principle helps ensure government regulates only speech that government has the "power to regulate," *NCRL III,* 525 F.3d at 282, *i.e.,* speech that government has a constitutional interest in regulating. *See id.* at 281 (citing *Buckley,* 424 U.S. at 80). This principle is part of the larger principle that law regulating political speech must not be overbroad, *see Buckley,* 424 U.S. at 80 ("impermissibly broad"), and thus overlaps with constitutional scrutiny.

3. Determining the Meaning of Political Speech and whether Government may Regulate it

64. *WRTL II* also reaffirms that in determining the meaning of political speech and whether government may regulate it, one looks to the substance of the speech itself. 551 U.S. at 469 (citing *Buckley,* 424 U.S. at 43-44). *WRTL II* all but forecloses considering context to determine the meaning of political speech and whether government may regulate it. *See id.* at 467-73.

Count 1: Vagueness

D. Vagueness

1. The Order of Questions for Political Committee Status

65. Plaintiffs re-allege the preceding paragraphs.

66. In addressing whether a jurisdiction may regulate an organization as a political committee,[27] the law requires considering these questions in this order: Does the organization (1) fall under a political-committee definition that is not unconstitutionally vague and therefore overbroad? If so, does the organization (2) pass the proper "under the control of a candidate" or major-purpose test? *See Buckley v. Valeo,* 424 U.S. 1, 74-79 (1976).

2. Hawaii Law is Vague, and therefore Overbroad

67. Hawaii's noncandidate-committee definition is unconstitutionally vague, and therefore overbroad, and the definition is unconstitutional as applied to A-1's speech and facially. Hawaii may not regulate A-1 as a political committee *via* this law. This suffices to conclude the political-committee inquiry.

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[27] Or whatever label a jurisdiction uses.

68. Other Hawaii law is also unconstitutionally vague, and therefore overbroad, and is unconstitutional as applied to A-1's speech and facially. Hawaii may not regulate A-1's speech *via* this law. This suffices to conclude the inquiry as to this law.

69. Hawaii's vague law does not "provide the kind of notice that will enable ordinary people to understand what conduct it" regulates; furthermore, "it may authorize and even encourage arbitrary and discriminatory enforcement." *City of Chicago v. Morales,* 527 U.S. 41, 56 (1999) (citing *Kolender v. Lawson,* 461 U.S. 352, 357 (1983)).

3. Why Hawaii Law is Vague, and therefore Overbroad

70. Hawaii's noncandidate-committee and expenditure definitions refer to influencing and "for the purpose of influencing" elections,[28] while the regulatory electioneering-communication definition, and by extension the electioneering-communication reporting requirements, refer to what "directly associate[s]" candidates with a "specific effort" to influence elections.[29]

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[28] *Supra* Part I.C.1.

[29] *Supra* Part I.C.2.

71. The advertisement definition – and by extension the electioneering-communication definitions, the electioneering-communication reporting requirements,[30] and the attribution and disclaimer requirements[31] – refer to what "advocates or supports" candidates.[32]

72. The electioneering-communication definitions include the appeal-to-vote test. *Compare* HAW. REV. STAT. § 11-Z.c ("any reasonable interpretation other than as an appeal to vote") *and* HAW. CODE R. § 2-14.1-24.1 ("no other purpose other than to directly associate a candidate with a specific effort to influence a candidate's nomination, for election or election, or defeat in a nomination for election or election") *with FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 469-70 (2010) ("*WRTL II*") ("no reasonable interpretation other than as an appeal to vote").[33]

73. This language is unconstitutionally vague, and therefore overbroad.

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[30] *Supra* Part I.C.2.

[31] *Supra* Part I.C.3.

[32] *Supra* Part I.C.2.

[33] *Supra* Part I.C.2.

74. Therefore, the foregoing are unconstitutionally vague, and therefore overbroad, and are unconstitutional as applied to A-1's speech and facially.[34]

E. Overbreadth: In General

75. In addition, Hawaii law is unconstitutional as applied to Yamada's, Stewart's, and A-1's speech and – with the exception of two counts[35] – facially.[36]

76. Hawaii law fails the appropriate level of scrutiny.

Count 2: The Noncandidate Committee Definition
Count 3: The Expenditure Definition

F. Overbreadth: The Noncandidate Committee and Expenditure Definitions

1. Strict Scrutiny

77. Plaintiffs re-allege the preceding paragraphs.

78. Strict scrutiny applies to government regulation of organizations as political committees. *See Austin v. Michigan Chamber*

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[34] Part II.J addresses facial unconstitutionality, including vagueness.

[35] *Infra* Part II.H-I.

[36] Parts II.E-I address as-applied challenges, and Part II.J addresses facial unconstitutionality, including overbreadth.

of Commerce, 494 U.S. 652, 658 (1990) (holding that a state requirement that an organization form a segregated fund "must be justified by a compelling state interest"), *overruled on other grounds, Citizens United v. FEC,* 558 U.S. ____, ____, 130 S.Ct. 876, 896-914 (2010); *Colorado Right to Life Comm., Inc. v. Coffman,* 498 F.3d 1137, 1146 (10th Cir. 2007) ("*CRLC*") (applying strict scrutiny to a state requirement that organizations themselves be political committees); *North Carolina Right to Life, Inc. v. Leake,* 525 F.3d 274, 290 (4th Cir. 2008) ("*NCRL III*") (addressing "narrower means" than a state requirement that organizations themselves be political committees); *cf. Citizens United,* 130 S.Ct. at 897-98 (holding that strict scrutiny applies to a ban on speech and noting the burdens of forming a political committee to do the same speech); *FEC v. Massachusetts Citizens for Life, Inc.,* 479 U.S. 238, 252 (1986) ("*MCFL*") (considering whether a ban on independent expenditures "is justified by a compelling state interest" and noting the burdens of forming a separate segregated fund to do the same speech).

79. *Buckley v. Valeo* establishes that government may regulate an organization as a political committee only if (1) it is "under the

control of a candidate" or candidates or (2) "the major purpose" of the organization is "the nomination or election of a candidate" or candidates. 424 U.S. 1, 79 (1976).

80. These two tests address whether a *definition* through which government imposes political-committee burdens is constitutional. *Unity08 v. FEC,* 596 F.3d 861, 867 (D.C. Cir. 2010) (noting that the "under the control of a candidate" and major-purpose tests limit the political-committee *definition* (quoting *FEC v. Machinists Non-Partisan Political League,* 655 F.2d 380, 392, 395-96 (D.C. Cir.), *cert. denied,* 454 U.S. 897 (1981))); *NCRL III,* 525 F.3d at 288-89 (considering whether a political-committee *definition* has the major-purpose test); *CRLC,* 498 F.3d at 1139 (holding a political-committee *definition* unconstitutional because it lacks the major-purpose test); *id.* at 1154-55 (applying the major-purpose test to a political-committee *definition*); *Brownsburg Area Patrons Affecting Change v. Baldwin,* 137 F.3d 503, 505 n.5 (7th Cir. 1998) (holding that *Buckley* limits a political-committee *definition* to organizations passing the major-purpose test).

81. For Hawaii to regulate an organization as a political committee, it must be under the control of a candidate or candidates for

state or local office *in Hawaii,* or the major purpose of the organization must be the nomination or election of a candidate or candidates for state or local office *in Hawaii.*

82. Determining whether an organization is "under the control of a candidate" or candidates for state or local office in Hawaii is straightforward, and A-1 is under no such control.[37]

83. Determining whether an organization passes the major-purpose test is also straightforward. A-1 does not have the major purpose of nominating or electing a candidate or candidates for state or local office in Hawaii: (1) It has not indicated this in its organizational documents or in its public statements, and (2) it does not spend the majority of its money on contributions to, or independent expenditures for, such candidates.[38]

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[37] Although it is not material, A-1 is not under the control of *any* candidate or candidates.

[38] Although it is not material, A-1 does not have the major purpose of nominating or electing *any* candidate or candidates. It has not indicated this in its organizational documents or in its public statements. Nor does it spend the majority of its money on contributions to, or independent expenditures for, *any* candidate or candidates.

2. Applying Strict Scrutiny

84. Hawaii lacks a compelling interest in regulating organizations such as A-1 as political committees, because they are neither under the control of, nor do they have the major purpose of nominating or electing, candidates for state or local office in Hawaii. In the alternative, Hawaii's noncandidate-committee and expenditure definitions[39] are not narrowly tailored, because they let Hawaii regulate organizations such as A-1 as political committees when they are neither under the control of, nor have the major purpose of nominating or electing, candidates for state or local office in Hawaii. *See CPLC I,* 328 F.3d at 1101 n.16 (quoting *MCFL,* 479 U.S. at 252-53); *NCRL III,* 525 F.3d at 290; *CRLC,* 498 F.3d at 1146.

85. Therefore, Hawaii's noncandidate-committee and expenditure definitions are unconstitutional as applied to A-1's speech.

86. If Hawaii wanted to regulate, for example, spending for political speech by persons it may *not* regulate as political committees under *Buckley,* 424 U.S. at 74-79, then it could use less-restrictive means.

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[39] *Supra* Part I.C.1.

3. *CPLC II*

87. In the alternative, Hawaii's regulation of organizations as political committee is not narrowly tailored to a compelling government interest, because it imposes political-committee burdens beyond express advocacy as defined in *Buckley*. *See California Pro-Life Council v. Randolph,* 507 F.3d 1172, 1187 (9th Cir. 2007) ("*CPLC II*") (citing *McConnell,* 540 U.S. at 203; *MCFL,* 479 U.S. at 241, 247-48).

Count 4: The Electioneering Communication Definition
Count 5: The Electioneering Communication Reporting Requirements
Count 6: The Disclaimer Requirements

G. Overbreadth: Electioneering Communication Definition, Electioneering Communication Reporting Requirements, and the Disclaimer Requirements

1. Exacting Scrutiny

88. Plaintiffs re-allege the preceding paragraphs.

89. Exacting scrutiny applies to disclosure requirements, including attribution, disclaimer, and reporting requirements, both for organizations government *may* regulate as political committees under *Buckley,* 424 U.S. at 74-79, *see Davis v. FEC,* 554 U.S. ____, ____, 128 S.Ct. 2759, 2775 (2008) (quoting *Buckley,* 424 U.S. at 64), and for those

it may *not*. *See Citizens United,* 130 S.Ct. at 914 (quoting *Buckley,* 424 U.S. at 64, 66).

90. Full-fledged political-committee *disclosure requirements* apply only if the jurisdiction's regulation of organizations as political committees – *i.e.,* only if the *definition* through which the jurisdiction imposes political-committee burdens[40] – is constitutional in the first place. So when the definition is unconstitutional – as Hawaii's is[41] – the requirements are unnecessary to consider.

2. Spending for Political Speech

91. When it comes to persons Hawaii may *not* regulate as political committees under *Buckley,* 424 U.S. at 74-79, the *only* spending for political speech that Supreme Court precedent has established Hawaii has a sufficiently important interest in regulating is:

- Express advocacy, *id.* at 39-51, 74-81, as defined in *Buckley, id.* at 44 & n.52, 80, *vis-à-vis state or local office in Hawaii,* and

[40] VC ¶ 27.

[41] *Supra* Part II.F.

- Regulable speech "about a candidate shortly before an election." *Citizens United,* 130 S.Ct. at 915: Electioneering communications as defined in the Federal Election Campaign Act, 2 U.S.C. § 431 *et seq., Citizens United,* 130 S.Ct. at 914-16, having a clearly identified candidate *for state or local office in Hawaii.*

See, e.g., NCRL III, 525 F.3d at 281-82.

3. Government's Interest in Disclosure

92. The "constitutional power of Congress to regulate federal elections[,]" *Buckley,* 424 U.S. at 13 & n.16, and each state's parallel power over its own, though not other states', elections, *see, e.g., NCRL III,* 525 F.3d at 281, cannot include power to gather "information" or "data" for information's or data's sake.

4. Applying Exacting Scrutiny

93. Hawaii's electioneering-communication definition, electioneering-communication reporting requirements, and disclaimer requirements[42] reach beyond spending for political speech that courts allow government to regulate. That is, Hawaii reaches beyond what it has a sufficiently important interest in regulating.

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[42] *Supra* Part I.C.2.

94. Hawaii law reaches beyond *spending-for-political-speech* boundaries. That is, it reaches beyond express advocacy as defined in *Buckley,* 424 U.S. at 44 n.52, 80, and beyond what the Supreme Court has held may be regulable speech "about a candidate shortly before an election." *Citizens United,* 130 S.Ct. at 915. This occurs through the electioneering-communication definition, the electioneering-communication reporting requirements, and the disclaimer requirements.

95. Because Hawaii reaches beyond what Hawaii has a sufficiently important interest in regulating, its law fails exacting scrutiny and is unconstitutional as applied to A-1's speech, and it is unnecessary to consider whether any factors such as those *Citizens United* mentions, 130 S.Ct. at 915-16, mean there is no "substantial relation" between the disclosure requirements and a "'sufficiently important' government[] interest." *Id.* at 914 (quoting *Buckley,* 424 U.S. at 64, 66).

96. For these reasons alone, the electioneering-communication definition, electioneering-communication reporting requirements, and the disclaimer requirements are unconstitutional as applied to A-1's

speech. *See also Citizens for Responsible Gov't State PAC v. Davidson,* 236 F.3d 1174, 1197 (10th Cir. 2000) (striking down a 24 hour reporting requirement); *ACLU of Nevada v. Heller,* 378 F.3d 979, 987 (9th Cir. 2004).

Count 7: The Ban on Contributions by Government Contractors

H. Overbreadth: Ban on Contributions by Government Contractors

97. Plaintiffs re-allege the preceding paragraphs.

98. Whatever the merits of banning government contractors' contributions to candidates or officeholders who decide whether the contractors receive contracts or oversee the contracts, *see Dallman v. Ritter,* 225 P.3d 610, 627 n.28 (Colo. 2010),[43] government has no compelling or sufficiently important interest in banning such contributions when the candidates or officeholders do *not* decide whether the contractors receive contracts and do not oversee the contracts. In the alternative, a ban on such contributions, *id.* at 628, is not narrowly tailored or closely drawn to meet a compelling or sufficiently important government interest. *See id.* at 627.

[43] *Supra* Part I.C.4.

99. Hawaii's ban is unconstitutional *as applied* to A-1's speech.

Count 8: The Political Committee Contribution Limits

I. Overbreadth: Political Committee Contribution Limits

100. Plaintiffs re-allege the preceding paragraphs.

101. As to the limit on contributions Yamada and Stewart make to AFA-PAC,[44] limits on contributions to political committees doing only independent spending for political speech – including independent expenditures – are unconstitutional regardless of the level of scrutiny. *Long Beach Area Chamber of Commerce v. City of Long Beach,* 603 F.3d 684, 691-99 (9th Cir. 2010).

102. Such limits are unconstitutional *as applied* to Yamada's and Stewart's speech.

Count 9: Vagueness and Overbreadth: Facial Unconstitutionality

J. Facially Unconstitutional

103. Plaintiffs re-allege the preceding paragraphs.

104. A state law is facially unconstitutional under the First Amendment, *Washington State Grange v. Washington State Republican*

[44] *Supra* Part I.C.5.

Party, 552 U.S. 442, 449 n.6 (2008) (citing *New York v. Ferber,* 458 U.S. 747, 769-71 (1982)), and a state law burdening free speech is facially unconstitutional for vagueness under the Fourteenth Amendment, *see United States v. Salerno,* 481 U.S. 739, 745 (1987) (citing *Schall v. Martin,* 467 U.S. 253, 269 n.18 (1984)); *Kolender v. Lawson,* 461 U.S. 352, 358 & n.8 (1983), *followed in City of Chicago v. Morales,* 527 U.S. 41, 60 (1999), when it reaches "a substantial amount of protected speech ... not only in an absolute sense, but also relative to the [law's] plainly legitimate sweep." *United States v. Williams,* 553 U.S. 285, 292-93 (2008) (citing *Board of Trs. of State Univ. of N. Y. v. Fox,* 492 U.S. 469, 485 (1989); *Broadrick v. Oklahoma,* 413 U.S. 601, 615 (1973)).

105. Whether the challenge is based on the First Amendment, Fourteenth Amendment, or both, all of the law that is unconstitutional as applied to particular Plaintiffs' speech – except for the law in two counts[45] – is also facially unconstitutional.

K. Narrowing Glosses, Certification, and Severability

106. Unlike in *Buckley v. Valeo,* 424 U.S. 1, 44 & n.52, 80 (1976), no narrowing gloss saves the unconstitutional law in this action. Nor is

[45] *Supra* Parts II.H-I.

certifying a question appropriate where, as here, the state law is not fairly susceptible to a narrowing gloss. Furthermore, severing the unconstitutional language from the remaining language – which is a question of state law – is not an option in this action.

III. Prayers for Relief

107. Plaintiff A-1 seeks a declaratory judgment that the noncandidate-committee and expenditure definitions, HAW. REV. STAT. § 11-B; HAW. CODE R. § 2-14.1-2, are unconstitutional as applied to A-1's speech and facially. A-1 further asks that the Court preliminarily and then later permanently enjoin their enforcement.[46]

108. Plaintiff A-1 seeks a declaratory judgment that the electioneering-communication and advertising definitions, and the electioneering-communication reporting requirements, HAW. REV. STAT. §§ 11-Z.c, 11-B; HAW. CODE R. § 2-14.1-24.1, are unconstitutional as applied to A-1's speech and facially. A-1 further asks that the Court preliminarily and then later permanently enjoin their enforcement.[47]

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[46] VC ¶ 29.

[47] VC ¶ 35.

109. Plaintiff A-1 seeks a declaratory judgment that the advertising definition and disclaimer requirements, HAW. REV. STAT. §§ 11-B, 11-YYa.2.b, are unconstitutional as applied to A-1's speech and facially. A-1 further asks that the Court preliminarily and then later permanently enjoin their enforcement.[48]

110. Plaintiff A-1 seeks a declaratory judgment that the ban on government contractors' making contributions, HAW. REV. STAT. § 11-HH, is unconstitutional *as applied* to A-1's speech. A-1 further asks that the Court preliminarily and then later permanently enjoin its enforcement.[49]

111. Plaintiffs Yamada and Stewart seek a declaratory judgment that the limit on contributions noncandidate committees receive, HAW. REV. STAT. § 11-KK, is unconstitutional *as applied* to Yamada's and Stewart's speech. Yamada and Stewart further ask that the Court preliminarily and then later permanently enjoin its enforcement.[50]

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[48] VC ¶ 39.

[49] VC ¶ 43.

[50] VC ¶ 46.

112. Any narrowing gloss would be incorrect as a matter of law. If the Court nevertheless held that a narrowing gloss were possible, Plaintiff A-1 prays for the following relief:

- A declaratory judgment limiting Hawaii's noncandidate-committee definition, HAW. REV. STAT. § 11-B, HAW. CODE R. § 2-14.1-2, and by extension the burdens Hawaii imposes on noncandidate committees, to organizations that are under the control of, or have the major purpose of nominating or electing, a candidate or candidates for state or local office in Hawaii.[51]

- A declaratory judgment limiting Hawaii's electioneering-communication definition, electioneering-communication reporting requirements, HAW. REV. STAT. §§ 11-Z.c, 11-B; HAW. CODE R. § 2-14.1-24.1, advertising definition, and disclaimer requirements, HAW. REV. STAT. §§ 11-B, 11-

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[51] In the alternative, Plaintiff A-1 prays that the Court limit the definition and burdens to organizations that are under the control of, or have the major purpose of nominating or electing, *any* candidate or candidates.

Plaintiff A-1 submits this alternative would also be incorrect, because, for example, it would allow Hawaii to regulate as Hawaii noncandidate committees those organizations that are under the control of, or have the major purpose of nominating or electing, candidates for *federal* office or candidates for *state or local office in another state.* This can easily turn against Hawaii and allow these non-Hawaii jurisdictions to regulate organizations that really do pass the "under the control of a candidate" or major-purpose test in Hawaii.

Moreover, under this approach, a jurisdiction could impose political-committee burdens on organizations whose activity is minimal – or even zero – in the jurisdiction.

YYa.2.b, to (a) express advocacy as defined in *Buckley vis-à-vis* state or local office in Hawaii or (b) electioneering communications as defined in FECA having a clearly identified candidate for state or local office in Hawaii,[52] and

113. Plaintiffs further seek costs and attorneys' fees under 42 U.S.C. § 1988 (2000) and any other applicable statute or authority, and

[52] In the alternative, Plaintiff A-1 prays that the Court limit this law to (a) express advocacy as defined in *Buckley vis-à-vis any* office or (b) electioneering communications as defined in FECA having *any* clearly identified candidate.

further seek other relief this Court in its discretion deems just and appropriate.

Respectfully submitted,

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