

Column

# Ian Lind: Don't Ban Campaign Fundraising During Legislative Sessions

Some people seem to equate holding fundraisers during sessions to accepting bribes, but there's a free speech issue here.

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By Ian Lind  / November 9, 2017

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Should legislators be prohibited from holding campaign fundraisers while the Legislature is in session? A lot of people think the answer is an obvious and irrefutable “yes.”

Although I'm not a fan of special interest money flooding into our elections, I don't agree.

The question came up during a panel discussion this week on ethics in government, organized by Common Cause Hawaii. A member of the audience commented on legislators' failure over several years to pass such a bill.



Students watch a Hawaii Senate floor session in 2016. Should legislators be able hold campaign fundraisers at the same time of year they are deciding the fate of bills?

She said it seems crazy to allow active fundraising while decisions are being made on which bills will pass and which will be left to languish and die.

The questioner is certainly not alone in feeling that there's something unethical going on when legislators are voting on bills at the same time they have their hands out to actively solicit and accept contributions, including those from lobbyists and others with interests in the matters being decided.

Supporters of a session ban say the practice creates the appearance of a "pay to play" system in which legislators seek contributions given by those seeking to influence their votes. Many people appear to find it difficult to distinguish between fundraisers scheduled during session and an implicit solicitation of bribes.

## Valid Reasons For In-Session Events

Certainly, from such a perspective, it's crazy not to support a ban.

But having worked at the City Council and the Legislature, participated in campaigns, been a registered lobbyist for a nonprofit group, and spent years observing politics as a journalist, I think the reality of campaign fundraising, and the legality of trying to control it, are much more complex than proponents of a ban recognize.

In my view, there are some good reasons that fundraisers are often held during the session, and more reasons why trying to prohibit them wouldn't be easy.

First, I'll state the obvious. Despite years of discussion and some small-scale experiments, we don't have a viable public funding mechanism — or even a conceptual plan for one — that would reduce the need for candidates to raise at least a portion of the money needed for their campaigns. So for now, like it or not, fundraising by candidates is a fact of political life. Perhaps not a pretty part, but unavoidable.



**It's often easier, in practical terms, to pull a fundraiser together during the session than at other times of year.**

At the same time, I have no doubt that asking for money is truly one of the hardest things about running for elective office. I don't think I've met a candidate who truly enjoys asking potential supporters to write a check.

Most of us have social and psychological barriers to overcome before we are able to make a direct fundraising pitch, and candidates for public office are no different. Asking someone for money is, well, just darn hard to do. That's why charitable organizations have to spend so much time and effort training their leaders and key volunteers how to overcome inhibitions and make that "ask" without freaking out.

And there are some valid reasons it makes sense to schedule fundraising events during the legislative session. For one thing, that's when all legislators are most engaged in their jobs. Remember, Hawaii considers serving in the Legislature to be a part-time job. While you couldn't call legislative salaries meager, they aren't set at a level necessary to support a full-time Legislature.

Legislators put in very long hours during the intense months of the annual legislative session, beginning the third Wednesday of January and running through early May. For neighbor island legislators, it's when they are in Honolulu. It's also when legislative staffers, often selected from the most loyal campaign volunteers, are at the capitol and available to pitch in on planning and organizing fundraisers during their off-hours.

All together, it means that it's often easier, in practical terms, to pull a fundraiser together during the session than at other times of year.

In addition, there's more news reporting during the session about issues undergoing legislative scrutiny, which translates into increased public interest. Politics is simply more salient at this time of year, with more people paying attention, and this likely means more of them will be interested enough to attend a fundraiser.

## Alternative Could Be Worse

Keep in mind that fundraisers are politics at the retail level. Fundraiser tickets typically aren't sold in face-to-face contacts. While some tickets are distributed personally, campaigns typically mail or email fundraiser notices, sometimes with tickets, to their lists of supporters and constituents, as well as to registered lobbyists and other public officials. And then the campaigns have to wait and see who buys tickets, and who actually shows up for the events.

The alternative would appear to be increased reliance on small, intimate meetings behind closed doors between candidates and potential donors. It

seems to me that there's more potential for dangerous shenanigans in those settings than a whirl of mass mailings and relatively public events.

Fundraising events have a social function as well as a financial one. They are often the most accessible settings where it's possible to get up close and personal with our elected officials, especially for those of us who don't regularly hang out in the hallways or on the Capitol railing throughout the session.



## A candidate's right to raise funds to enable their own political speech is protected by the First Amendment.

Attendees are usually a cross-section of the politically engaged, the “usual suspects,” including lobbyists, legislative staffers, other elected officials, campaign volunteers, engaged constituents, members of community interest or ideological groups, and party activists in search of face time with public officials, inside info on bills and their prospects, political gossip and old-fashioned networking.

Let's also be clear on another thing. A candidate's right to raise funds to enable their own political speech is protected by the First Amendment. In fact, political speech is considered the most important form of protected speech. Attempts to restrict such a right by prohibiting fundraising will almost certainly be subject to “strict scrutiny” by the courts and will not be allowed to go forward unless they meet several legal conditions.

Any proposed restriction must be justified by a “compelling” government interest. The restriction must be narrowly tailored to achieve the desired goal. And the proposal must be the least restrictive way to achieve the stated government interest.

## Expediting Campaign Disclosures

This doesn't mean that campaign fundraising can't be regulated. Bans on direct corporate contributions to candidates have, to date, been upheld against constitutional challenges, as have contribution limits. Similarly, we have laws banning campaign fundraising in public buildings such as the Capitol. And requirements for public disclosure of campaign contributions and expenditures have also been upheld as legal, despite having an acknowledged impact on First Amendment rights.

These limitations appear to be legal because they directly further the government's interest in limiting corruption and the appearance of corruption, at this point the only reasons the courts have found acceptable for restricting campaign contributions and the attendant free speech rights.

As long as campaign contributions are otherwise legal, it's difficult to see that those made during the legislative session are inherently more corrupting than those made at other times of year. For that reason, it's hard to see a general session ban surviving the "strict scrutiny" test.



**Speedy disclosure of contributions received during session fundraisers could provide a timely and meaningful check against attempts to buy votes.**

A slightly different approach, however, might prove workable. Rather than banning all session fundraisers, perhaps a workable answer is to expedite disclosure of contributions made during session fundraisers.

Generally, Hawaii law doesn't require public disclosure of campaign contributions made during the session until about two months after final adjournment. Timely disclosure could make information on session contributions available to the public before final votes are taken on most bills.

State law already requires disclosure of last-minute contributions of \$500 or more received in the final two weeks prior to any election to be made public within three days. Similar speedy disclosure of contributions received during session fundraisers, perhaps within three to five days, could provide a timely and meaningful check against attempts to buy votes while the Legislature is meeting.

It's at least a potential way of lessening the potential for corruption from fundraising events held during the legislative session, shining the light of timely public disclosure on these transactions, rather than getting bogged down in pursuit of a ban that would be unlikely to survive legal challenge.

## About the Author



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Ian Lind is an award-winning investigative reporter and columnist who has been blogging daily for 15 years. He has also worked as a newsletter publisher, public interest advocate and lobbyist for Common Cause in Hawaii, peace educator, and legislative staffer. Lind is a lifelong resident of the islands. [Read his blog here.](#)

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