



HAWAII STATE ETHICS COMMISSION

State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

February 20, 2008

The Honorable Clarence K. Nishihara, Chair
The Honorable Donna Mercado Kim, Vice Chair
Senate Committee on Tourism and Government Operations

The Honorable Brian T. Taniguchi, Chair
The Honorable Clayton Hee, Vice Chair
Senate Committee on Judiciary and Labor

Re: Testimony on S.B. No. 2570, Relating to Standards of Conduct

Hearing: Wednesday, February 20, 2008, 10:00 a.m.
State Capitol, Conference Room 016
415 South Beretania Street

Testifying: Daniel J. Mollway
Executive Director and General Counsel
Hawaii State Ethics Commission

The Honorable Clarence K. Nishihara, Chair; The Honorable Donna Mercado Kim, Vice Chair; Honorable Members of the Senate Committee on Tourism and Government Operations; and

The Honorable Brian T. Taniguchi, Chair; The Honorable Clayton Hee, Vice Chair; and Honorable Members of the Senate Committee on Judiciary and Labor:

Thank you for the opportunity today to testify on S.B. 2570, Relating to Standards of Conduct. The purpose of this bill is to bar legislators and state employees who are nominees subject to a Senate advice and consent proceeding from using state time, state equipment, and state resources to solicit "support" for the legislator's or employee's nomination.

Although Section 1 of this bill finds that state resources should not be used by a nominee to solicit support, Section 1 of this bill does not provide a basis for this finding. Thus, we assume that the evils this bill seeks to address are the use or particularly the "overuse" by a nominee of state resources to solicit support for his or her nomination.

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Such support, we assume, focuses on the use of state stationery, state emails, and the use of state employees to, in essence, launch an extensive campaign for a nominee.

Despite this bill's purpose to promote governmental ethics, we do, however, have concerns with this bill.

While the bill restricts a nominee from using state resources to solicit support for himself or herself, the bill does not restrict other state employees from using state resources to solicit opposition to a nominee. We believe that this creates a disparity. State employees in a nominee's own department, for example, could use state resources in a near unlimited manner to wage their own "campaign." We are not sure that the fact that under this bill other state employees (other than the nominee) would be allowed to solicit support for the nominee with the use of state resources adequately addresses this disparity, since it is the nominee's own work performance and character that is the subject of the opposition.

We believe that this disparity could create a skewed process that might be detrimental to the informed decision of the Members of a Senate advice and consent proceeding.

Further, we believe we have an obligation to suggest that such a disparity might raise constitutional issues, and thus we believe that whether or not this bill raises constitutional issues should be raised with the Office of the Attorney General.

For the reasons set forth above, we believe that this bill should be subject to further consideration.

Thank you for this opportunity to testify on this bill today. I would be happy to address any questions that Members may have.