



The Judiciary, State of Hawaii

Testimony to the Senate Committee on Judiciary and Labor
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Thursday, April 7, 2011, 9:30 a.m.
State Capitol, Conference Room 016

by
Judge Glenn Kim, Chair
Hawaii Supreme Court Standing Committee on the Rules of Evidence

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 1376 (H.B. No. 1376), Relating to Evidence

Purpose: Makes permanent the limited news media privilege against the compelled disclosure of sources and unpublished information.

Judiciary's Position:

H.B. No. 1376 makes permanent the qualified journalists' privilege against compelled disclosure of sources and unpublished information that was established by Act 210 (2008). H.B. No. 1376 accomplishes this by eliminating Act 210's sunset clause which, if left standing, will automatically repeal this privilege measure on June 30, 2011.

The Standing Committee on Rules of Evidence was established by the Chief Justice on 15 July 1993 "to study and evaluate proposed evidence law measures referred by the Hawaii Legislature, and to consider and propose appropriate amendments to the Hawaii Rules of Evidence." Whether or not to retain a journalists' privilege is a question that should be addressed, in the first instance, to the Supreme Court's Standing Committee on Rules of Evidence. Accordingly, the committee requests that the Legislature, recognizing the principle of shared governance of the Hawaii Rules of Evidence, refer this matter to the evidence rules committee for interim study and a full report in advance of the convening of the 2012 Legislature.



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The committee observes that the drafters of evidence rules did not recommend a journalists' privilege, and the 1980 Legislature did not adopt one. Nor do the Uniform Rules of Evidence contain such a privilege. The committee has no present information regarding the status of journalists in the other 49 states, but would undertake this kind of research if the matter were referred to it.

The evidence rules committee offers that it would have no objection to an extension of the sunset date of Act 210 (2008), which would allow for a thorough review of the issue without premature repeal of the law.

Thank you for the opportunity to provide **comments** on H.B. No. 1376.



LATE TESTIMONY

Committee: Committee on Judiciary and Labor
Hearing Date/Time: Thursday, April 7, 2011, 9:30 a.m.
Place: Room 016
Re: Testimony of the ACLU of Hawaii In Support of and to Offer Comments to H.B. 1376, Relating to Evidence

Dear Chair Hee and Members of the Committee on Judiciary and Labor:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in support of and to offer comments to H.B. 1376.

Freedom of the press promotes speech and self-governance for all Americans. Journalists provide information needed for voters to evaluate candidates. They uncover unlawful acts by elected representatives and expose government abuses of power. Investigative reporting helps ensure that our government is open to public scrutiny. Liberty is lost without a free and independent press.

Journalists cannot maintain their independence without access to information from confidential sources. The Watergate scandal and the Pentagon Papers became public only after informants were assured anonymity. More recently, confidential sources broke stories about illegal government programs including torture, warrantless wiretapping, kidnapping, and illegal detention. In retaliation, the government has used subpoenas to intimidate journalists into revealing sources and jailed them if they declined to name names.

The government’s efforts to silence dissent are facilitated by the lack of a journalist’s privilege from identifying confidential sources. Forty-nine states and D.C. recognize some form of reporters’ privilege. A vibrant and meaningful state reporters’ shield will ensure that journalists continue to have the tools they need to hold the government accountable to the people. It also will allow the press to continue to inform the public about substantial risks to our health and safety without fear of government persecution.

We urge this Committee to make the state media shield law permanent with the following recommendations:

- **Adopt a qualified privilege** that generally protects against forced disclosure of sources, with narrow exceptions for protecting other competing rights and interests.

American Civil Liberties Union of Hawai'i
P.O. Box 3410
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Chair Hee, JDL Committee,
and Members Thereof
April 7, 2011
Page 2 of 2

- **Balance a reporters' privilege with the constitutional rights of criminal defendants** to have access to sources and information that may be exculpatory or might mitigate their sentences.
- **Use a functional definition of "journalist"** focusing on acts of journalism and whether information from confidential sources is secured for dissemination to the public.

The experience of the states, most federal courts, and our closest allies around the world demonstrates that we can have freedom of the press without harming our collective security. A state media shield law that safeguards free speech and other important interests strikes the right balance.

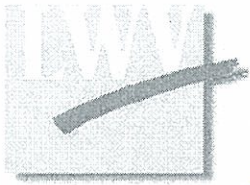
The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple
Staff Attorney
ACLU of Hawaii

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THE LEAGUE
OF WOMEN VOTERS OF HAWAII

TESTIMONY ON HB1376 RELATING TO EVIDENCE

Committee on Judiciary and Labor
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Thursday, April 7, 2011
9:30 a.m.
Conference Room 016

Testifier: Jean Aoki, LWV Legislative Committee

Chair Hee, Vice Chair Shimabukuro, members of the Committee on Judiciary and Labor,

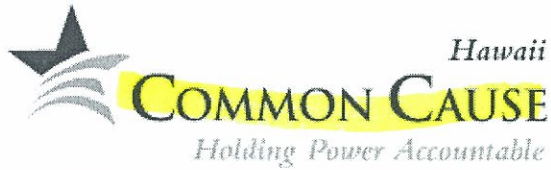
The League of Women Voters of Hawaii strongly supports HB 1376 which makes permanent the limited news media privilege against the compelled disclosure of sources and unpublished information.

Act 210, Session Laws of Hawaii 2008, contains enough limits to this protection for journalists when it is unquestionably in the State's interest to force disclosure of some or all of the information where suspected crime is involved and no other source of the information is available.

Reliable and detailed information is necessary whether in enacting policies by legislators, or in making certain decisions needed to protect the public from harm from different sources, or for revealing suspicious activities and actions on the part of individuals and groups or even government agencies. Trusted journalists, and I include bloggers, may have access to people who can give them important information without fearing disclosure. These journalists may have the instincts and skills to ascertain the veracity of such information. But for this, the Shield Law is a protection they need.

This is a law that helps preserve our democracy. Please make this a permanent law.

Thank you for this opportunity to testify on a very important bill.



LATE TESTIMONY

P.O. Box 22703 • Honolulu, Hawaii 96823 • (808) 275-6275

Web: www.commoncausehawaii.org • Email: info@commoncausehawaii.org

**Senate JDL Committee
Chair Clayton Hee, Vice Chair Maile Shimabukuro**

**Thursday 4/7/11 at 9:30 AM in Room 016
HB 1376 – Relating to Evidence – Shield Law**

TESTIMONY

Nikki Love, Executive Director, Common Cause Hawaii

Chair Hee, Vice Chair Shimabukuro, and Committee members:

Common Cause Hawaii supports HB 1376, which removes the sunset date for Hawaii's shield law.

This bill would make permanent Hawaii's shield law, which protects journalists from revealing their confidential sources. The shield law is a critical tool for protecting and promoting a robust news media.

A strong democracy depends on information and knowledge, so that citizens and leaders have the information necessary to make decisions and hold government and other institutions accountable. The news media must have the freedom and protections to ensure they can fulfill their role in collecting and disseminating that information, and especially in investigating controversial issues. By protecting sources who reveal critical information, the shield law is essential to making this work possible.

Mahalo for hearing this bill and for the opportunity to submit testimony.

Ted H.S. Hong
Attorney at Law

Employment, Workplace Law & Litigation

LATE TESTIMONY

Sue Lee Loy
Planner and Legal Assistant

April 4, 2011

The Hon. Clayton Hee
Chairman
Judiciary and Labor Committee
Hawaii State Capitol, Room 407
Honolulu, Hawaii 96813

RECEIVED APR 06 2011

RE: **HB 1376**, Relating to Evidence.

Dear Chairperson Hee and Committee Members:

The purpose of this letter is to respectfully request the Senate Judiciary and Labor Committee schedule a hearing on HB 1376. This is an important piece of legislation that needs your immediate attention. The purpose of the bill is to make permanent the extension of the privilege that protects sources from disclosure for on-line journalists.

As you are aware, the journalism profession is rapidly changing. Many mainstream media, including the Honolulu Star Advertiser, are now placing more content on their websites. Some mainland newspapers deliver their news through their websites exclusively. If this amendment is allowed to expire, those journalists would not be allowed to protect their sources. Reverting back to the former, restrictive and less progressive law, would be a step backward.

The specific example that comes to mind was the tragedy at the Kaloko dam. But for the intense work by Hawaii Reporter (online publication) and its journalists and their ability to protect their sources of information, the magnitude of the wrongdoing by all parties concerning this tragedy would not have been exposed. Clearly, it cannot be this Legislature's intent to prevent special interests, government and the very wealthy, from being scrutinized and held accountable for their misdeeds and possibly criminal behavior. It cannot be this Legislature's intent to allow people to be harmed by rich and powerful interests, without someone being held to account.

It is the freedom of the media that gives voice to people who have no voice or influence in the halls of government or private industry. It is the media's ability to talk to people and gather information to expose wrongdoing and harm caused by government or big business without the constant harassment and risk of exposure by lawyers financed by special interests.

HB 1376, is important, because it protects men and women working in sensitive positions who have decided to the "right thing" and protects them from having to fear for their jobs, their families and their lives and reputations. Please schedule a hearing as soon as possible on this important legislation.

Respectfully,


Ted H.S. Hong

Sen. Sam Slom

From: Malia Zimmerman [malia@hawaiireporter.com]
Sent: Thursday, April 07, 2011 6:43 AM
To: Sen. Sam Slom
Subject: testimony in support of HB 1376

April 6, 2011

Dear Senate Judiciary and Labor Chair Clayton Hee, Vice Chair Maile S.L. Shimabukuro, and Committee members Mike Gabbard, Les Ihara Jr. and Sam Slom,

We are writing in support of HB 1376, which makes permanent the limited news media privilege against the compelled disclosure of sources and unpublished information.

The bill is important to media and whistleblowers in Hawaii and aids in furthering government transparency. Journalism and open government groups fought for many years to get such a bill passed. The legislation is recognized as one of the most progressive in the nation. House majority leader Blake Oshiro prided himself on its passage in 2008 and the Hawaii Legislature receive praise nationally for its legislation.

The bill was supported unanimously by the Senate Judiciary committee members in 2008. We ask you to eliminate the sunset provision so it becomes permanent.

Sincerely,

Malia Zimmerman
on behalf of Hawaii Reporter staff
(808) 306-3161
Malia@hawaiireporter.com