



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012**

ON THE FOLLOWING MEASURE:

**H.B. NO. 2751, H.D. 1, RELATING TO OFFENSES AGAINST PUBLIC
ADMINISTRATION.**

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, February 21, 2012

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Lance M. Goto, Deputy Attorney General

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General (the "Department") has concerns about this bill and submits the following comments.

The purpose of this bill is to create an offense of disorderly or contemptuous behavior regarding decorum at the Legislature, and to authorize either house of the Legislature to punish such conduct with up to thirty days imprisonment.

The Department is concerned about the use of vague and subjective terms to define the prohibited conduct as described in paragraph (a) on page 1 of the bill, at lines 9-13:

Recklessly engages in disorderly or contemptuous behavior, committed in the presence of either house or any committee of a house, and directly tending to interrupt its proceedings or impair the respect due to such proceedings.

The terms "disorderly," "contemptuous," and "directly tending," and the phrase "impair the respect due to such proceedings," are vague and subjective. As a result, this provision does not provide adequate notice of the conduct that is prohibited.

Additionally, as drafted the bill may create an unconstitutional content-based restriction on free speech. For example, if by "disorderly and contemptuous" the bill would penalize heckling and booing, but would *not* penalize cheering and applauding, then a content-based restriction may be created, which would violate freedom of speech rights under the United States Constitution. If that is not the intent, we respectfully recommend that the bill be further clarified to eliminate this concern.

We note, for example, that section 711-1101, Hawaii Revised Statutes (HRS), currently provides a definition of “disorderly conduct.” Amongst other things, the definition of disorderly conduct in section 711-1101 references making “unreasonable” noise, using “coarse behavior or abusive language,” and engaging in “threatening, or in violent and tumultuous behaviors.” Additionally, section 710-1077, HRS, currently provides a definition of “contempt of court.” This definition includes examples such as creating a “breach of peace...with intent to interrupt” proceedings. Reference to the wording and examples in these statutes could be helpful in clarifying the definitional terms in this bill.



HOUSE OF REPRESENTATIVES

STATE OF HAWAII
STATE CAPITOL
HONOLULU, HAWAII 96813

Chair Keith-Agaran, Vice Chair Rhoads and members of the Judiciary Committee, thank you for the opportunity to testify in support of House Bill 2751, HD1. My name is Kevin R. Kuroda, House Sergeant At Arms.

The purpose of House Bill 2751, HD1 is to strengthen the intent of Article III, section 18 of the Hawaii State Constitution which reads as follows:

PUNISHMENT OF NONMEMBERS

Section 18. Each house may punish by fine, or by imprisonment not exceeding thirty days, any person not a member of either house who shall be guilty of disrespect of such house by any disorderly or contemptuous behavior in its presence or that of any committee thereof; or who shall, on account of the exercise of any legislative function, threaten harm to the body or estate of any of the members of such house; or who shall assault, arrest or detain any witness or other person ordered to attend such house, on the witness' or other person's way going to or returning therefrom; or who shall rescue any person arrested by order of such house.

Any person charged with such an offense shall be informed in writing of the charge made against the person and have opportunity to present evidence and be heard in the person's own defense. [Ren and am Const Con 1978 and election Nov 7, 1978]

If adopted, HB 2751, HD1 will codify actions prohibited during official legislative proceedings.

As a footnote, HB 2751 as introduced addressed legislative disruptions in the penal code under chapter 710. And if this measure moves forward, SCR 582-12 asks this Committee to examine whether the penalties would be more appropriately placed within the Judiciary system. If the Committee decided that was more appropriate, I would have no objection.

Thank you for the opportunity to testify.



COMMITTEE ON JUDICIARY
Rep. Gilbert S.C. Keith-Agaran, Chair
Rep. Karl Rhoads, Vice Chair

Members: Rep. Tom Brower, Rep. Rida T.R. Cabanilla, Rep. Mele Carroll, Rep. Denny Coffman, Rep. Robert N. Herkes, Rep. Ken Ito, Rep. Sylvia Luke, Rep. Angus L.K. McKelvey, Rep. Joseph M. Souki, Rep. Cliff Tsuji, Rep. George R. Fontaine, Rep. Barbara C. Marumoto, Rep. Cynthia Thielen

HB 2751, HD1 RELATING TO OFFENSES AGAINST PUBLIC ADMINISTRATION

HEARING

DATE: Tuesday, February 21, 2012
TIME: 2:00 PM
PLACE: Conference Room 325

This is a blatant attempt to curb political expression by threatening citizens with criminal sanctions for expressing themselves at the State Capitol.

The Gay Lesbian Bisexual and Transgender Caucus feels compelled to testify against this measure, because it was often during the course of the passage of the civil unions bill that proponents and opponents engaged in spontaneous outbursts of emotion as they genuinely felt that "the system" had failed (or supported) them.

Emotional issues elicit emotional responses. If you want emotional responses to end, the legislature should deal with legislation in a professional and even-handed manner. Citizens do not typically react emotionally simply because the fate of the bill was not what they expected. It is the seeming unfairness to which they object.

For example, on January 29, 2010, Representative Magaoay chaired the session. Speaker Say opened by moving to postpone HB444 indefinitely, it was quickly seconded by House Whip Chong. Vice Speaker Magaoay called for discussion. Representative Bertram was the only House member with the presence of mind to object. Everyone else was completely bewildered, because the motion taken out of order. When Representative Bertram sat down, Vice Speaker called for a voice vote so quickly that many Representatives did not vote. The opponents burst into cheers; a citizen called from the gallery for a roll call vote. The Vice Speaker raced onto the next order of business, foreclosing any opportunity to take a roll call vote.

If someone is disruptive, both Houses have a staff from the Sergeant-At-Arms office to escort the offender from the chambers. To the extent that this bill includes criminal behavior such as assault, those behaviors are already covered by the HRS and can be dealt with accordingly through appropriate criminal procedures.

Jo-Ann M. Adams, Chair
Gay Lesbian Bisexual and Transgender Caucus



TESTIMONY IN OPPOSITION TO HB2751 HD1
Relating to Offenses Against Public Administration

HOUSE JUDICIARY COMMITTEE

DATE: Tuesday, February 21, 2012
TIME: 2:00 PM
PLACE: Conference Room 325, State Capitol
PAGES: 2 total

Dear Chair and Members of the Committee:

Hawaii Citizens for the Separation of State and Church opposes HB2751 HD1, the so-called "Stop Mitch Kahle" bill, for a number of reasons.

The House Legislative Management Committee claims the bill's purpose "is to create the offense of disrespect of a house of the Legislature for disorderly or contemptuous behavior by a person who is not a member of the Legislature."

It is the pinnacle of hypocrisy for you to enact a law that does not apply to lawmakers.

Legislators are not above the law, nor are they above criticism.

This bill allows anyone charged with this offense of disrespect "the opportunity to be heard and to present evidence before the appropriate house in the person's own defense."

Legislators are setting up a Kangaroo Court where they get to play judge, jury and executioner, meting out 30-day jail sentences for so-called "contemptuous behavior."

The House Sergeant-at-Arms testified that the purpose of this bill is to strengthen Article III Section 18 of the Hawaii State Constitution, "Punishment of Nonmembers."

There is no evidence this obscure section of the Hawaii Constitution has ever been required or implemented. The House Sergeant at Arms admitted in a committee hearing that he has never had to remove a member of the public.

The one time that the Senate Sergeant-At-Arms removed a citizen, the State was sued in federal court for violating that citizen's constitutional rights.

This bill is crafted merely to punish people who disagree with you.

As proponents of the First Amendment, we believe there should be no statute outlawing "disrespect" any more than there should be any law against blasphemy.

We urge this committee to reject this misguided legislation. Existing statutes, which prohibit "disorderly conduct" and the "obstruction of government operations," are already sufficient to maintain decorum while protecting the rights of citizens to participate in our democracy.

If passed, this bill will only invite challenges and controversy.

Sincerely,

Holly J. Huber
Co-Founder

REV. CAROLYN MARTINEZ GOLOJUCH, MSW

92-954 Makakilo Drive #71 • Makakilo, Hawai`i 96707-1340
cell: 808 779-9078 • fax: 808 672-6347 • e-mail: gomama808@gmail.com

February 19, 2012

TO: House Judiciary Committee

RE: AGAINST HB 2751 OFFENSES AGAINST PUBLIC ADMINISTRATION

Aloha House Judiciary Committee Chair, Vice Chair and members,

HB 2751 is a bill written under the theory of Rankism, the belief that those in power are above the law. To deny peaceful public speech is a violation of not only freedom of speech but the belief that the public has free access to those who have been elected to protect those who have voted. This bill is a travesty of legislation that is no more than flexing the House muscles.

What is of utmost importance is protecting our US Constitution's Freedom of Speech. US Citizens have the right to peacefully protest as one of our fundamental rights of all. To deny this right is a direct hit on our US Constitution, which is more devastating than any terrorist attack.

Because of this, I am asking you as law abiding US citizens to vote NO on HB2751 which is one of the most detrimental bills of this session.

Thank you for creating a safe place for all citizens when they visit the House Chambers for any session or hearing by voting against this disastrous bill.

Sincerely,

Rev. Carolyn M. Golojuch, MSW
Native American Spiritualist

MITCHELL G. KAHLE

1519 NUUANU AVE., #154, HONOLULU, HAWAII 96817 • PHONE: 524-4040

TESTIMONY IN OPPOSITION TO HB 2751, HD1

Relating to Offenses Against Public Administration

COMMITTEE ON JUDICIARY

DATE Tuesday, February 21, 2012

TIME: 2:00 PM

PLACE: Conference Room 325, State Capitol

PAGES: 1 of 2 Total

Dear Chair and Members of the Committee:

My name is Mitch Kahle and I oppose House Bill 2751, HD1 on the grounds that it will create situations where some legislators may engage in deliberate or spiteful acts of viewpoint discrimination.

If this legislature truly wishes to prevent “disrespect of a house of the Legislature for disorderly or contemptuous behavior,” then it should stop violating citizens’ constitutional rights by allowing decidedly Christian invocations.

For example: On Thursday, February 9th, the House invocation included the following overt Christian references: “My beloved King, King of all Kings, the Messiah, among others and ended “In the Name of the Father, and of the Son, and the Holy Spirit. Amen.”

This prayer and many others like it have far exceeded the limits of *Marsh v Chambers*. All such sectarian prayers are in direct violation of the Constitution of the United States and House Rule 29.2.

Having observed many legislative sessions, I have witnessed that speech deemed favorable to the legislature is not only allowed, but encouraged. For example when members of the public applaud or respond to the invocation with an “Amen”. At the same time, I have witnessed stern rebukes to speech deemed unfavorable, such as booing, jeering, or objections to an unconstitutional prayer.

Citizens have constitutional rights, not only to “free speech”, but also to “petition.” The right to “petition government for a redress of grievances” is the right to make a complaint without fear of punishment or reprisals.

When this legislature “recklessly” violates citizens’ rights, WE, THE PEOPLE, have every right to object, peacefully, verbally, and immediately.

It is YOU, who have shown “contempt” for the Constitution of the United States.

It is YOU, who have “impaired the respect that is due” to the citizens of Hawaii.

I oppose HB 2751 because appears to be a “bill of attainder,” crafted out of spite to accomplish by *fiat* what you could not accomplish in a court of law.

On April 29, 2010, I objected to a violation of my civil rights—an unconstitutional prayer—when after I was summarily dragged from the Senate Chambers and assaulted by the Sergeant-At-Arms. Another citizen was also assaulted for recording the incident on video and required hospitalization.

I was arrested and charged with obstructing government operations, disorderly conduct, and resisting arrest. Over a period of six months, the state aggressively attempted to prosecute me, summoning me into court on six separate occasions, running up thousands of dollars in court costs and legal fees.

In spite of this government-sponsored attack on freedom, District Court Judge Leslie Hayashi ruled that I was **NOT GUILTY**. In fact Judge Hayashi scolded the prosecutor, asserting that I “had a right to object to the prayer,” because it “violated the constitutional separation of church and state.”

Because of my actions, the Senate was forced to drop its invocations and the state is now being sued in Federal Court.

I oppose HB 2751 because any application of this law would be an act of unconstitutional viewpoint discrimination.

Be forewarned! If you pass this bill, and the Governor signs it, I will personally challenge you at every opportunity. And if the House or Senate, or any individual legislator ever violates my civil rights again, I will sue you all over again, and with great pleasure.

This is not a threat—it is a promise.

Sincerely,

Mitch Kahle

Testimony for HB2751 on 2/21/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, February 20, 2012 12:26 PM

To: JUDtestimony

Cc: cstravelerhi@yahoo.com

Testimony for JUD 2/21/2012 2:00:00 PM HB2751

Conference room: 325
Testifier position: Oppose
Testifier will be present: Yes
Submitted by: Craig Smith
Organization: Individual
E-mail: cstravelerhi@yahoo.com
Submitted on: 2/20/2012

Comments:

Dear Chair Keith-Agaran and fellow committee members,

I guess my sarcasm in my previous testimony was not the way to go since this horrible bill (HB 2751 HD1) has got another hearing.

There are already rules on the books that cover this issue. I thought that the legislature was going to focus on jobs and the economy this session. How does this bill improve the economy or create jobs? Unless of course you are trying to increase the number of correctional officers and the sergeant-of-arms' staff, otherwise this bill has nothing to do with your supposed focus this year.

It seems to me that you are trying to demanded respect from the public by fear of incarceration. If the occupy movement has taught you anything it should be that fear of jail will not keep the 99% quiet when we are being oppressed by the government.

I have talked to lawyers and they said on the face this bill maybe constitutional but it will become unconstitutional the minute you enforce it against those that speak out at your failures and not enforced against those that support your decisions. So think carefully before you vote on this bill. Do you really want to waste more of the taxpayer's dollars by passing this ill-conceived bill; or would you rather use those precious dollars to ensure we have a safety net, our food supply is safe, and we have money to pay our teachers.

If you chose the later then you will show us the respect that the author of this bill wants no demands of us; and that would be move in the right direction. But if you chose to move this horrible bill forward, you will only be calling on us to speak-out and call for your removal.

Do the right thing and KILL this bill, not the Bill of Rights! For you cannot legislate respect. Respect only comes when it has been earned and that does not come from just winning an election.

Thank you for the opportunity to testify this on horrible bill.

Craig Smith

Testimony for HB2751 on 2/21/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, February 20, 2012 9:09 PM

To: JUDtestimony

Cc: inunyabus@gmail.com

Testimony for JUD 2/21/2012 2:00:00 PM HB2751

Conference room: 325

Testifier position: Oppose

Testifier will be present: No

Submitted by: E. Dunbar

Organization: Individual

E-mail: inunyabus@gmail.com

Submitted on: 2/20/2012

Comments:

HB2751

One could only assume that the trend with many legislators' attitudes to draw a line of separation between yourselves and those that you purport to represent has become so apparent that there will undoubtedly be a little disagreement. You are not royalty, lest you need be reminded and the issues that become 'contemptuous' are important matters for many people so perhaps it is your behavior that should be called into question.

I believe there are sufficient rules and laws that cover incidents such as this and that you could make your time in service much more purposeful if you would please drop the pretentiousness.

This bill makes you appear petty. I should say, with all due respect, if you can't handle the heat in the political kitchen you might look for a career that is more serene.



LEAGUE OF
WOMEN VOTERS*

League of Women Voters of Hawaii

49 South Hotel Street, Room 314 | Honolulu, HI 96813

www.lwv-hawaii.com | 808.531.7448 | voters@lwv-hawaii.com

House Committee on Judiciary
Chair Rep. Gilbert S.C. Keith-Agaran, Vice Chair Rep. Karl Rhoads

Tuesday 2/21/12 at 2:00 PM in Room 325
HB 2175 HD1— RELATING TO THE STATE CODE OF ETHICS

TESTIMONY

JoAnn Maruoka, Legislative Committee Member, League of Women Voters of Hawaii

Chair Keith-Agaran, Vice Chair Rhoads, and Committee Members:

The League of Women Voters of Hawaii cannot support HB 2175 HD1 to exempt from the conflict of interest law under the state ethics code a person serving on a task force or working group established by the legislature for the purpose of recommending possible legislation. The bill amends the definition of “employee” in the state ethics code to exclude members of groups established by the legislature to recommend possible legislation and amends the definition of “state agency” to exclude “task forces, working groups, or other similar entities.”

We understand the need for and certainly encourage participation by citizens in such task forces and working groups. We do not understand the need to exclude from the conflict of interest law those who provide the legislature with advice and especially who formulate recommendations on possible legislation. It is not sound. As we testified on the original bill, we are gravely concerned about the inherent risks of actual or at the least the perception of conflict of interest, including undue influence. We want all those who participate in the formulation of public policy, laws and rules to be held to a high standard.

In these times of badly-eroded public trust in government, it does not make sense to build in loopholes counter to openness and transparency. We also caution that while the stated purpose is to exempt those on a task force or working group from the conflict of interest law, such an exemption may have unintended consequences, such as totally excluding them from the state ethics code.

The purpose in having a Code of Ethics is to prevent corruption in government. Every step forward in protecting against corruption helps improve public confidence in government. For government to work people must have faith in the integrity of its elected officials and the culture of honesty. We urge you to hold the bill in committee.

Thank you for the opportunity to submit testimony.

Testimony for HB2751 on 2/21/2012 2:00:00 PM

Testimony for HB2751 on 2/21/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, February 20, 2012 8:01 PM

To: JUDtestimony

Cc: lorax3283@hotmail.com

Attachments: PrayerNO2-20-12.pages (152 KB)

Testimony for JUD 2/21/2012 2:00:00 PM HB2751

Conference room: 325

Testifier position: Oppose

Testifier will be present: No

Submitted by: Doreen Adams

Organization: Individual

E-mail: lorax3283@hotmail.com

Submitted on: 2/20/2012

Comments:



Testimony for HB2751 on 2/21/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Sunday, February 19, 2012 11:12 PM

To: JUDtestimony

Cc: capitolist@tomaitken.net

Testimony for JUD 2/21/2012 2:00:00 PM HB2751

Conference room: 325
Testifier position: Oppose
Testifier will be present: No
Submitted by: Tom Aitken
Organization: Individual
E-mail: capitolist@tomaitken.net
Submitted on: 2/19/2012

Comments:

This legislation is incredibly broad and threatens citizens' rights to peacefully protest. What possible threat to the rules of House decorum could possibly have triggered this reactionary legislation in our diverse community? Please oppose it.

Testimony for HB2751 on 2/21/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Sunday, February 19, 2012 5:41 PM

To: JUDtestimony

Cc: Michelegolojuch@gmail.com

Testimony for JUD 2/21/2012 2:00:00 PM HB2751

Conference room: 325

Testifier position: Oppose

Testifier will be present: Yes

Submitted by: Michele

Organization: Individual

E-mail: Michelegolojuch@gmail.com

Submitted on: 2/19/2012

Comments:

You can not legislate respect. The law already cover any disruption in the house. There is no training in law-inforcement for those in the house and there is no money in the budget for their training. It would be like asking a sixth grade class to man a DUI stop on our roads.



Testimony for HB2751 on 2/21/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Sunday, February 19, 2012 5:40 PM

To: JUDtestimony

Cc: Michelegolojuch@gmail.com

Testimony for JUD 2/21/2012 2:00:00 PM HB2751

Conference room: 325

Testifier position: Oppose

Testifier will be present: Yes

Submitted by: Michele

Organization: Individual

E-mail: Michelegolojuch@gmail.com

Submitted on: 2/19/2012

Comments:

You can not legislate respect. The law already cover any disruption in the house. There is no training in law-enforcement for those in the house and there is no money in the budget for their training. It would be like asking a sixth grade class to man a DUI stop on our roads.



Testimony for HB2751 on 2/21/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Friday, February 17, 2012 7:58 PM

To: JUDtestimony

Cc: toddhairgrove@hotmail.com

Testimony for JUD 2/21/2012 2:00:00 PM HB2751

Conference room: 325

Testifier position: Support

Testifier will be present: Yes

Submitted by: Todd Hairgrove

Organization: Individual

E-mail: toddhairgrove@hotmail.com

Submitted on: 2/17/2012

Comments:

I Agree with this Bill 100%