



HOUSE OF REPRESENTATIVES

STATE OF HAWAII
STATE CAPITOL
HONOLULU, HAWAII 96813

Chair Yamashita, Vice Chair Tokioka and members of the Legislative Management Committee, thank you for the opportunity to testify in support of House Bill 2751 proposed HD1. My name is Kevin R. Kuroda, House Sergeant At Arms.

The purpose of House Bill 2751 proposed 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 proposed 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 the Committee decided that was more appropriate, I would have no objection.

Thank you for the opportunity to testify.

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

HOUSE COMMITTEE ON LEGISLATIVE MANAGEMENT

DATE: Wednesday, February 15, 2012
TIME: 1:30 PM
PLACE: Conference Room 423, State Capitol
PAGES: 2

Dear Chair and Members of the Committee:

The poet Ralph Waldo Emerson, wrote "Men are respectable only as they respect."

For years the House and Senate have repeatedly demonstrated "disrespect" and "contempt" for the citizens of Hawaii by including Christian prayers in legislative sessions.

Just last Thursday, the House invocation was saturated with Christian references:

"My beloved King, King of all Kings, the Messiah, the Almighty Lord, the One who made the Heavens and the Earth, Thank You for blessing us today, and we thank You for the many things You have given us, we lift You up and praise Your Name, we humbly ask for Your forgiveness, guidance, and protection. In the Name of the Father, and of the Son, and the Holy Spirit. Amen."

This prayer was a deliberate and blatant violation of the Constitution of the United States, far exceeding the limits of *Marsh v Chambers* with each and every sectarian reference.

I will argue—*in federal court if necessary*—that House invocations have repeatedly violated the civil rights of Hawaii residents, who possess inalienable First Amendment rights that are *superior* to this or any statute.

The First Amendment reads: "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."

HB2751 would make it a crime for any citizen to "recklessly engage in contemptuous behavior" and "impair the respect due to such proceedings."

The bill and the proposed HD1 include ambiguous and nuanced language that could lead legislators to engage in unconstitutional viewpoint discrimination.

Who will define the meaning of words like “contemptuous” and “respect”?

In sub-paragraph (b), this bill seeks to criminalize any action that “threatens harm to the person or estate of any member of either house.” Again this language violates the Constitution, as citizens have inalienable First Amendment rights.

This “estate” provision could also be construed to indemnify legislators from lawsuits which may arise from violations of citizens’ constitutional rights or impede citizens’ rights to protest.

In sub-paragraph (d), this legislation would make it a crime for any person who “rescues or attempts to rescue any person arrested by order of either house.” Would this make it illegal for someone to post bail?

Paragraph (3), reads in part: “Whenever there is probable cause to believe that a person has violated [the law].” This would create overly broad leeway for viewpoint discrimination. Could a person’s impassioned testimony before a House committee land them in jail for 30 days? Legislators are not above criticism.

Further, this section appears to extend the powers of the sergeant-at-arms beyond the scope of his or her limited police powers. Neither sergeant-at-arms has received proper law enforcement training. In particular none have received training in probable cause or constitutional rights, or in proper procedures for making an arrest, or in the use of force against citizens.

The State of Hawaii, Senate Sergeant-At-Arms, and Department of Public Safety are already being sued in federal court for violating citizens’ constitutional rights on April 29, 2010. That incident, where citizens peacefully objected to a transgression of their constitutional rights, would not have violated any provision of this proposed legislation or any current statute.

If passed, HB2751 represents a minefield of opportunity for malfeasance by legislators and a quagmire of additional litigation against the state.

I 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.

Sincerely,

Holly J. Huber
Co-Founder

Amy Luke

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 13, 2012 3:38 PM
To: LMGtestimony
Cc: [REDACTED]
Subject: Testimony for HB2751 on 2/15/2012 1:30:00 PM

Testimony for LMG 2/15/2012 1:30:00 PM HB2751

Conference room: 423
Testifier position: Oppose
Testifier will be present: No
Submitted by: Teri Heede
Organization: Individual
E-mail: [REDACTED]
Submitted on: 2/13/2012

Comments:

You have a enough protection. There is no justification for this legislation.

Frankly, if this is too heavy a burden for anyone in office, they should find a new job rather than face the scary constituents that might not like the job they are doing.

This is ridiculous.