



## LATE TESTIMONY

Committee: Committee on Public Safety, Government Operations, and Military Affairs  
Hearing Date/Time: Thursday, February 3, 2011, 2:45 p.m.  
Place: Conference Room 224  
Re: Testimony of the ACLU of Hawaii in Opposition to S.B. 880,  
Relating to Veterans' Rights and Benefits

Dear Chair Espero and Members of the Committee on Public Safety, Government Operations, and Military Affairs:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in opposition to S.B. 880, Relating to Veterans' Rights and Benefits, which seeks to prohibit individuals from protesting at or near funerals.

Funeral protest bans, like the one proposed by S.B. 880, are on precarious legal footing. Just last week, for example, a federal court in Missouri struck down a similar ban, *see Phelps-Roper v. County of St. Charles, Mo.*, 2011 WL 227561 (E.D. Mo. Jan. 24, 2011). *See also Phelps-Roper v. City of Manchester, Missouri*, 2010 WL 3614182 (E.D. Mo. Sept. 8, 2010) (striking down ban); *cf. Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 775 (1994) (holding that a 300 foot buffer zone around residences was unconstitutionally broad).

Funeral protests by Fred Phelps and members of the Westboro Baptist Church have become notorious for the protests' cruel and distasteful message, and public opinion overwhelmingly rejects this type of conduct. Nevertheless, even uniformly unpopular speech is protected by the First Amendment. S.B. 880 will invite legal challenges; if these legal challenges are successful, the State will be liable for the protesters' attorneys' fees (meaning that the State will be funding the very speech it is trying to suppress).

Furthermore, S.B. 880 is particularly troublesome because it begins by banning *all* protests at cemeteries, followed by vague language about obtaining "approval" from the appropriate County Council. A requirement that protesters obtain advance approval under *all* circumstances – even when no funeral is scheduled – is facially unconstitutional. *See, e.g., Long Beach Area Peace Network v. City of Long Beach*, 574 F.3d 1011, 1038 (9th Cir. 2009) (striking down a 24-hour notice requirement because the ordinance in question was "not narrowly tailored to regulate only events in which there is a substantial governmental interest in requiring such advance notice"), *cert. denied*, 130 S. Ct. 1569 (2010).

In sum, we respectfully request that the Committee defer this measure.

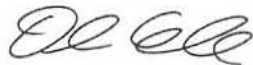
American Civil Liberties Union of Hawaii  
P.O. Box 3410  
Honolulu, Hawai'i 96801  
T: 808.522-5900  
F: 808.522-5909  
E: office@acluhawaii.org  
www.acluhawaii.org

Chair Espero and Members of the Committee on  
Public Safety, Government Operations,  
and Military Affairs  
February 3, 2011  
Page 2 of 2

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 45 years.

Thank you for this opportunity to testify.

Sincerely,



Daniel M. Gluck  
Senior Staff Attorney  
ACLU of Hawaii

American Civil Liberties Union of Hawaii  
P.O. Box 3410  
Honolulu, Hawaii 96801  
T: 808.522-5900  
F: 808.522-5909  
E: [office@acluhawaii.org](mailto:office@acluhawaii.org)  
[www.acluhawaii.org](http://www.acluhawaii.org)