

**HB619**

**HD1**

**PROPOSED SD1**



*Hawaii News Now  
420 Waiakamilo Road, Suite 205  
Honolulu, HI 96817  
(808) 847-3246  
(808) 847-3298 (fax)*

To Chair Hee and Members of the Judiciary Committee:

In 2008, the Hawaii State Legislature approved one of the most progressive laws in the nation protecting confidential sources who give information to both traditional and non-traditional journalists.

This so-called “shield law” protects journalists, while newsgathering, from being forced to reveal the identity of these sources or unpublished information.

Remember Watergate and the publication of the Pentagon Papers? Neither would have come to light without strong shield laws protecting the identity of these sources. Those giving such information could lose their jobs, or be prosecuted, for revealing key information that exposed corruption or abuse.

The current statute is not a blanket policy for journalists to do whatever they want. For instance, it does not apply in felony criminal cases or civil defamation cases if the information can be obtained in any other way. The information must be necessary and relevant as well.

The sunset on the shield law occurs on June 30 of this year and we strong urge support of HB 622 Relating to Evidence, which would remove the sunset provision of Act 210, Sessions Laws of Hawaii 2008. Further we oppose the amendments proposed by the House Judiciary Committee.

As the News Director of Hawaii News Now and former Editor of the Honolulu Advertiser, I believe it is essential for this law to remain on the books unchanged. In five years, there have been no negative repercussions and only positive resolution.

We have a model shield law that is the envy of other states. This law established five years ago should remain permanent in order to protect those who have important information to share that could help fight injustice in the state.

Sincerely,  
Mark Platte  
News Director  
Hawaii News Now  
(808) 843-3601

# COMMUNITY ALLIANCE ON PRISONS

76 North King Street, Honolulu, HI 96817

Phones/E-Mail: (808) 533-3454, (808) 927-1214 / [kat.caphi@gmail.com](mailto:kat.caphi@gmail.com)



## COMMITTEE ON JUDICIARY AND LABOR

Sen. Clayton Hee, Chair

Sen. Maile Shimabukuro, Vice Chair

Thursday, March 28, 2013

10:30 a.m.

Room 016

## STRONG SUPPORT FOR ORIGINAL HB 622 – EVIDENCE

Aloha Chair Hee, Vice Chair Shimabukuro and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies for more than a decade. This testimony is respectfully offered on behalf of the 5,800 Hawai'i individuals living behind bars, always mindful that approximately 1,500 individuals are serving their sentences abroad, thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

The original version of HB 622 makes permanent the limited news media privilege against the compelled disclosure of sources and unpublished sources.

Community Alliance is in strong support of this measure that upholds the First Amendment. This stated out as a simple bill, just asking that the sunset be lifted to make Hawai'i's widely acclaimed bill a permanent statute.

Thirty-nine state and the District of Columbia currently have shield laws and the Student Press Law Center has described Hawai'i's law as "the best in the country in terms of the clarity and breadth of its coverage." Our law has been cited as a model for a national shield law.

The Judiciary Evidence Committee has reviewed the law as requested by the Legislature and it recommended that "the sunset provision be eliminated and that Act 210 be integrated into HRS Chapter 621.

Please amend this bill and pass the original version of HB 622. Mahalo for this opportunity to testify.

*"Let the people know the facts, and the country will be safe."*

Abraham Lincoln



Eugene S. Pulliam National Journalism Center  
3909 N. Meridian St., Indianapolis, IN 46208

Sen. Clayton Hee  
Senate Committee on Judiciary  
415 S. Beretania St.  
Honolulu, HI 96813

Re: House Bill 622, H.D. 1 Relating to Evidence

Chairman Hee and Members of the Judiciary Committee:

I am Sonny Albarado, president of the Society of Professional Journalists, the nation's oldest and largest journalism advocacy group with about 8,000 members.

The Society of Professional Journalists supports in principle what are commonly known as shield laws, and we specifically support HB 622 Relating to Evidence, which would remove the June 30, 2013, sunset provision of Act 210, Session Laws of Hawaii 2008.

As a nationwide journalism organization, we have found that shield laws protect not just journalists, but all citizens by making possible the free flow of information in a democratic society as envisioned by the First Amendment to the U.S. Constitution.

Hawaii's Shield Law is comparable to Arkansas' and one of the best in the country in terms of depth of coverage application.

For that reason, we support renewal of the existing law without any major changes.

We ask that you delete two amendments made by the House Judiciary Committee – reducing the instances of absolute privilege by adding potential felony, or serious crime involving unlawful injury to persons or animals and all civil litigation. This would reduce the coverage of the law to one of the lowest levels among the 40 jurisdictions that have shield laws.

The Judiciary's Evidence Committee, requested by the Legislature to review the law, has recommended that the law be readopted.

One of the reasons Hawaii's law enjoys a fine reputation for coverage is that it provides a limited privilege to those acting in similar capacity to journalists. We ask that you preserve this coverage as much as possible.

Respectfully submitted,

Sonny Albarado  
President  
Society of Professional Journalists

# HAWAII SHIELD LAW COALITION

Jeffrey Portnoy, Esq.: 808.521.9211  
[jportnoy@cades.com](mailto:jportnoy@cades.com)

Gerald Kato: 808.223.3844  
[Kato\\_gerald@yahoo.com](mailto:Kato_gerald@yahoo.com)

Stirling Morita: 808.347.0388  
[stirling@clearwire.net](mailto:stirling@clearwire.net)

Chris Conybeare: 808.225.6288  
[conybeare@msn.com](mailto:conybeare@msn.com)

To: Senate Committee on Judiciary  
Hearing: 10:30 a.m. March 28, 2013  
Room 016 State Capitol

## TESTIMONY IN SUPPORT OF HB 622 HD 1 RELATING TO EVIDENCE

Chair Hee and Members of the Judiciary Committee:

The Hawaii Shield Law Coalition supports HB 622 Relating to Evidence, which would remove the June 30, 2013 sunset provision of Act 210, Session Laws of Hawaii 2008. However, we oppose the amendments proposed by the House Judiciary Committee.

Act 210, commonly known as the "Shield Law," provides a limited privilege to journalists, and those acting in similar capacity, against compulsory disclosure of confidential sources and unpublished information. The House amendments would dilute and diminish the effectiveness of the protections of the law.

The Coalition is an organization representing the Hawaii Chapter of Society of Professional Journalists, Media Council Hawaii, The Big Island Press Club, Hawaii Publishers Association, Hawaii News Now, Hawaii Reporter, Honolulu Civil Beat, Honolulu Star Advertiser, KHON-2 News, KITV-4 News, PacificBasin Communications, Ka Leo O Hawaii, Spotlight Hawaii, Hawaii Tribune-Herald, West Hawaii Today and The Associated Press.

We believe the shield law as it was enacted five years ago should remain a permanent part of Hawaii statutes. During those five years, there have been no reported problems with the law, and it has been tested in court once, in the case of a filmmaker working on documentary about Native Hawaiian burial sites, an issue clearly of public interest and concern.

PAGE TWO OF TWO  
HAWAII SHIELD LAW COALITION

Thirty-nine states and the District of Columbia currently have shield laws. The Student Press Law Center has described Hawaii's law as "the best in the country in terms of the clarity and breadth of its coverage." It has been cited as a model for a national shield law.

This law is the product of long and detailed negotiations five years ago between representatives of the news media and the then Attorney General. Compromises were made on both sides with the able assistance of former Rep. Blake Oshiro. The bill that ultimately became Act 210 is a tribute to all parties recognizing the need to protect the free flow of information in a democratic society while balancing the need for information in the pursuit of justice.

The current Attorney General now proposes to unravel this finely-woven tapestry of compromise by pulling threads from it that would, in the end, make it a useless pile of string. Revisiting these issues will only undo all that has been done and, indeed, threatens to add instability to what should be settled issues in the law. You should know that every issue raised by the Attorney General was addressed in negotiations five years ago.

The Judiciary's Evidence Committee has reviewed the law as requested by the Legislature, and it recommended that "the sunset provision be eliminated and that Act 210 be integrated in HRS Ch. 621."

Hawaii has long prided itself on being at the forefront of progressive legislation. This law should be counted as one of the state's major achievements in protecting dissemination of news and information in the public interest and protecting a free and independent press. We urge your support of the existing law.

Thank you for your consideration. We're prepared to respond to any questions you may have.



Testimony in support of HB 622, Hawaii Shield Law

Chairman Hee and Members of the Senate Judiciary Committee:

What if Watergate had never happened?

What if whistleblowers like Erin Brockovich were afraid to expose corporate and government wrongdoing that endanger people's lives? What would our nation look like if everyday citizens were intimidated into keeping crucial information from the press?

What if the police, or trial lawyers seeking millions of dollars in damages, didn't have to do their own legwork, bringing that burden of proof to a jury in the tried-and-true tradition of a judicial system guaranteeing civil rights? What if they could, instead, just scribble out a subpoena and grab a reporter's notes about things that were told in trust and confidence?

That, my friends, is life without a shield law, also known as reporter's privilege. It's called a privilege for reporters, but the ones it really protects are the citizens, the whistleblowers.

Hawaii has such a shield law. Or it does, at least, until June 30. That's the date the current law runs out, unless lawmakers make it permanent.

It's important that the law be made permanent without watering it down by exempting civil litigation and serious crime involving unlawful injury to persons or animals. Leaving in these amendments by the House Judiciary Committee would reduce coverage of the law to one of the lowest levels among the 40 jurisdictions that have shield laws, according to the Society of Professional Journalists.

This limited news media privilege against the compelled disclosure of sources and unpublished information has successfully protected a journalist and a documentary film producer in Hawaii since it was enacted almost five years ago. More importantly, it has stood as a model for other states and a beacon to a free press, preventing untold subpoenas and threats to the exercise of journalistic endeavors.

It is difficult to quantify the negative, so it is not known how many journalists were not compelled to turn over their notes and sources because of the shield law. In short, however, there has been no documented harm to the state because of the shield law, and at least two cases where the law served its purpose in furthering a free press.

Thirty-eight states, plus the District of Columbia, have substantial protections in place, according to the The Reporters Committee for Freedom of the Press.

Should Hawaii -- the Aloha State, the state that embraces privacy and individual liberties even more than most -- be the state that fails to protect that brave individual who comes forward to voice concerns about wrongdoing and corruption? I hope not.

Sincerely,

Nancy Cook Lauer

Publisher, All Hawaii News

<http://www.allhawaiinews.com>





P.O. Box 3141  
Honolulu, HI 96802  
March 28, 2013

Sen. Clayton Hee  
Senate Committee on Judiciary  
415 S. Beretania St.  
Honolulu, HI 96813

Re: House Bill 622, H.D. 1 Relating to Evidence

Chairman Hee and Members of the Judiciary Committee:

The Hawaii Chapter of the Society of Professional Journalists supports Act 210, Session Laws of Hawaii 2008, as an important law that helps provide a free flow of information in a democratic society by providing a limited privilege to journalists and nontraditional journalists against disclosure of confidential sources and unpublished information.

We ask you to restore HB 622 Relating to Evidence to its original wording. This would mean simply removing the June 30, 2013, sunset provision of Act 210, Session Laws of Hawaii 2008.

The law works and has caused no problems. It is one of the best in the country in terms of depth of coverage. For that reason, we support renewal of the existing law without any major changes.

We ask that you delete two of the amendments made by the House Judiciary Committee that reduce the instances of absolute privilege by adding "potential felony, or serious crime involving unlawful injury to persons or animals" and "all civil litigation" to the section on exceptions. This would reduce the coverage of the law to the lowest tier among the 40 jurisdictions that have shield laws.

The Judiciary's Evidence Committee, requested by the Legislature to review the law, has recommended that the law be readopted.

The only parts of the bill we do not object to is elimination of the sunset date and the part: "d) No fine or imprisonment shall be imposed against a person validly claiming [~~the~~] a privilege

pursuant to this section [~~for refusal to disclose information privileged pursuant to this section~~]."

I would like to explain our position on some of the issues raised by the Department of the Attorney General:

>> **Expand the exemptions from absolute privilege to "potential felony, or serious crime involving unlawful injury to persons or animals" and all "civil litigation."** This would pave the way for authorities to go on fishing expeditions for information. The current exceptions are already low in rank when compared to other states. But if this amendment is allowed to stand, Hawaii would be next to last with Maine (of the 40 jurisdictions) on absolute privilege coverage. Most jurisdictions don't have such major exceptions.

>> **Unpublished information should not be protected.** Seeking unpublished information intrudes on the editorial process and violates the media's First Amendment rights to speak without fear of state interference. More than 70 percent of the 40 jurisdictions allow protection of unpublished information. Without this, an independent filmmaker would have had a difficult time defending against subpoenas for his footage of Native Hawaiian burials. This was the first court test of the law. Without such protection, filmmaker Keoni Alvarez has said, he would have given up his project and an important film about Native Hawaiian burials might never have been made.

>> **Nontraditional journalists should not be protected.** One of the reasons Hawaii's law enjoys a fine reputation for coverage is that it provides a limited privilege to those acting in similar capacity to journalists. This does not cover everyone with a blog or someone making comments on Webpages.

We ask you to think back to the 1890s when the first shield law was crafted in Maryland. It covered only newspapers. Who would have thought that radios and television would come about and need protection? Now we have the Internet. Some day, there won't be newspapers. That's why this law is so important in looking forward into the future of journalism. We ask that you preserve this coverage as much as possible.

Sincerely,



Stirling Morita  
President  
Hawaii Chapter  
Society of Professional Journalists



# Big Island Press Club

The Big Island Press Club supports HB 622, relating to the Shield Law.

We believe the shield law as it was enacted five years ago should remain a permanent part of Hawaii statutes. During those five years there has been no reported problems with the law and it has been tested in court once, in the case of a filmmaker working on documentary about Native Hawaiian burial sites, an issue clearly of public interest and concern.

It is difficult to quantify the negative, so it is not known how many journalists were not compelled to turn over their notes and sources because of the shield law. In short, however, there has been no documented harm to the state because of the shield law, and at least two cases where the law served its purpose in furthering a free press.

We ask that you delete two of the amendments made by the House Judiciary Committee – reducing the instances of absolute privilege by adding potential felony, or serious crime involving unlawful injury to persons or animals and all civil litigation. These amendments would reduce the coverage of the law to one of the lowest levels among the 40 jurisdictions that have shield laws.

Established in 1967, BIPC is Hawaii's oldest continuously active press club.

Thank you for hearing this bill and giving it your serious consideration.

Yisa Var

President, Big Island Press Club

To: Senate Committee on Judiciary  
Hearing: 10:30 a.m. March 28, 2013  
Room 016 State Capitol

TESTIMONY IN SUPPORT OF HB 622, HD1 RELATING TO EVIDENCE

Chairman Hee and Members of the Judiciary Committee:

The Honolulu Star-Advertiser strongly supports HB 622, HD1 and the removal of the sunset provision of Act 210, Hawaii's so-called "Shield Law." We are equally vehement in our opposition to the House Judiciary Committee amendment to extend exceptions to Act 210's existing privileges. And we oppose any other major changes that would weaken a law that is safeguarding the public's right to know by providing limited but critical protections for journalists and their sources.

The current Hawaii Shield Law is a progressive piece of legislation that addresses the realities of 21st Century journalism. In its five years, Act 210 has worked as intended, created no major problems, and even protected the work of a Native Hawaiian documentarian. Journalism experts have lauded Act 210 as one of the most forward-thinking shield laws in the nation, as it helps protect both traditional and nontraditional journalists. Fears that the law would offer the same privileges to any person with a blog or a Twitter account are unfounded and ignore the wording of Act 210. The law's privileges are specifically extended to traditional journalists and an individual whose position is "materially similar or identical to that of a journalist or newscaster."

A House Judiciary Committee amendment would expand the exceptions to the privilege to include "potential felony, or serious crime involving unlawful injury to persons or animals" and all civil actions. This would dilute the existing law by vastly expanding the type of cases in which a journalist's sources and information were vulnerable. Indeed, the same national experts who laud Hawaii's current law say that such a change to our shield law would place it among the weakest in the United States.

Act 210 is a solid law. The Star-Advertiser urges you to follow the recommendation of the Judiciary's Evidence Committee by removing the sunset provision of Act 210 and making the law permanent. Thank you for your consideration.

Sincerely,



Ed Lynch  
Managing editor/news  
Honolulu Star-Advertiser



**hee2 - Kathleen**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 26, 2013 8:10 PM  
**To:** JDLTestimony  
**Cc:** OccupyHiloMedia@yahoo.com  
**Subject:** Submitted testimony for HB622 on Mar 28, 2013 10:30AM

**HB622**

Submitted on: 3/26/2013

Testimony for JDL on Mar 28, 2013 10:30AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kerri Marks	Occupy Hilo Media Team	Support	No

Comments: We are in strong support of making Hawaii's Shield Law permanent. We are proud that Hawaii serves as a model for journalists, bloggers, and citizen media everywhere. Mahalo for upholding our First Amendment Rights.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Spotlight Hawaii Publishing  
The Garden Island  
The Maui News  
This Week Magazines  
Trade Publishing Co.  
Traveler Media  
University of Hawaii  
West Hawaii Today  
Windward Community College

To: Senator Clayton Hee  
Senate Committee on Judiciary

Re: House Bill 622, H.D. 1 Relating to Evidence

The Hawaii Publishers Association supports HB 622 Relating to Evidence, which would remove the June 31, 2013 sunset provision of Act 210, Session Laws of Hawaii 2008.

This legislation would result in the preservation of the shield law as it was enacted five years ago. In that period there were virtually no problems with the law and it has been held as a model for a national shield law.

We believe that is because of all that went into its development. All parties involved recognized the need to protect the free flow of information in a democratic society, an ideal held by the First Amendment to the U.S. Constitution.

We also believe that the Hawaii Shield Law be renewed as it exists -- without any major changes. To enact any changes such as those recommended by the House judiciary Committee, would compromise the current effectiveness and application of our shield law, diluting the integrity of its original intent.

Protecting the public interest is tantamount to protecting the free press. We ask that you preserve and support this bill.

Respectfully submitted,

Ron Nagasawa  
President  
Hawaii Publishers Association

**hee2 - Kathleen**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 27, 2013 7:08 AM  
**To:** JDLTestimony  
**Cc:** Karen@RedwoodGames.com  
**Subject:** Submitted testimony for HB622 on Mar 28, 2013 10:30AM

**HB622**

Submitted on: 3/27/2013

Testimony for JDL on Mar 28, 2013 10:30AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Karen Chun	Individual	Support	No

Comments: Support original version w/no sunset. Should include bloggers

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Gerald Kato  
[kato\\_gerald@yahoo.com](mailto:kato_gerald@yahoo.com)  
809-223-3844

To: Senate Committee on Judiciary  
Hearing: 10:30 AM March 28, 2013  
Room 016 State Capitol

## **TESTIMONY IN SUPPORT OF HB 622 HD1 RELATING TO EVIDENCE**

Chair Hee and members of the Judiciary Committee

I am currently an Associate Professor Journalism at the University of Hawaii and a member of the board of Media Council Hawaii. This testimony is submitted on behalf of Media Council Hawaii and myself.

I support HB622HD1 Relating to Evidence – the Shield Law -- as it was first introduced without the amendments proposed by the House Judiciary Committee. The law currently on the books was enacted five years ago by unanimous vote of the House and Senate. It gives meaning to our state's commitment to the free flow of information in the 21<sup>st</sup> Century.

I have participated in every public hearing on this law for the Shield Law over the past five years and believe in its purposes and goals. For that reason I regret that I cannot be with you at this important hearing today. But I want to take this opportunity to share with you a personal statement on the Shield Law.

I am not a lawyer so I do not intend to engage the Office of Attorney General or anyone else in an endless debate on legal details. Those details, in any case, were subject to scrupulous negotiations five years ago that led to enactment of this law.

I am a journalist.

I am a journalist who's taught others to do journalism.

I believe good journalism makes us all better citizens.

I believe that good journalism is not only done within the four walls of a newsroom. Technology has broadened our capacity to gather and disseminate information of public concern. Each of us has the ability to engage in what the pamphleteers and publishers did when the First Amendment was written into our Constitution two centuries ago. For those reasons, I believe it is imperative that we maintain protections for all forms of journalism that advances the goal of an informed citizenry.

-MORE-



PAGE TWO  
Senate Judiciary Committee  
HB622HD!

Simply stated, a journalist is a person who gathers information for the purpose of disseminating it to the public.

Does that mean anyone who owns a computer or a video camera is a journalist? No.

It means that citizens informed about their community, their government, and their future well being can engage in civic life in a way they never could when only the owner of a printing press or a broadcast studio determined what we heard, saw or read. The instinctive reaction to only treat members of traditional news organizations as journalists while everyone else is viewed derisively as a “blogger” is wrongheaded and a denial of our First Amendment heritage. As the Ninth Circuit Court of Appeals once famously said, “what makes journalism journalism is not its form but its content.”

But, our focus on who is a journalist is misguided. This law is not about protecting journalists—traditional or otherwise—some of whom we may like personally or politically, others we may not. The underlying public policy of this law is to encourage sources, whistleblowers, for example, to disclose truthful information to the public so that the public will have full access to information it needs to meaningfully engage in the life of the community. I believe a strong Shield Law is a means of fighting public apathy.

I’ve heard concerns that the law is subject to abuse. Well, it’s worked for the past five years without any abuse, and it’s been subject to review by the Judiciary’s Evidence Committee. The law provides a reasonable means of reviewing all claims of privilege. The courts know the relevant statutes and the legislative intent, and, as they do in other areas of law, they can distinguish between legitimate and illegitimate claims for protection.

After a lifetime of journalism in Hawaii, I am convinced that we need to give meaning to the idea of free flow of information and the public’s right to know. I believe this is a law that encourages sources to reveal truthful information they have of public concern and encourages the kind of aggressive journalism we need. For the reasons I have expressed here, I pray that this committee preserve and protect Hawaii’s Shield Law.

## hee2 - Kathleen

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 27, 2013 11:03 AM  
**To:** JDLTestimony  
**Cc:** joanconrow@hawaiiantel.net  
**Subject:** Submitted testimony for HB622 on Mar 28, 2013 10:30AM

### HB622

Submitted on: 3/27/2013

Testimony for JDL on Mar 28, 2013 10:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Joan Conrow	Individual	Support	No

Comments: As an independent journalist and blogger I urge you to pass this bill. Journalists need to be able to protect their sources, especially in a state where people are often fearful to speak out. Please help us do our jobs by ensuring we are not compelled by threat of jail to disclose unpublished information and reveal the names of sources who trust us. I would like to see it expanded to include bloggers, independent videographers and others who may not fit the traditional definition of a journalist, but who nonetheless provide valuable news gathering and dissemination services. But at the very least, please ensure that at least some of us have protection. Mahalo.

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**hee2 - Kathleen**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 27, 2013 11:41 AM  
**To:** JDLTestimony  
**Cc:** ndavlanter@aol.com  
**Subject:** \*Submitted testimony for HB622 on Mar 28, 2013 10:30AM\*

**HB622**

Submitted on: 3/27/2013

Testimony for JDL on Mar 28, 2013 10:30AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Nancy Davlanter	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Testimony in support of HB 622, Hawaii Shield Law

Chairman Hee and Members of the Senate Judiciary Committee:

Please support the Hawaii Shield Law. Reporters need to protect their sources. Without a strong Shield Law, whistleblowers will be afraid to come forward.

Thank you for listening,

«GreetingLine»

Kealakekua, HI

March 27, 2013

Dear Chair Hee and Members of the Judiciary Committee

My name is Brenda Ching and I am a Board Member of the Media Council of Hawaii and the Executive Director of SAG-AFTRA, the union representing broadcast journalists and performing artists but today I am submitting testimony as an individual citizen.

I am writing in **support** of HB 622 Relating to Evidence (known as the Hawaii Shield Law) which would remove the June 30, 2013 sunset provision of Act 210. However, I **oppose** the amendments proposed by the House Judiciary Committee.

This law has been in effect for five years and has been instrumental in protecting sources of information. The proposed amendments threaten the free flow of information and public's right to know.

This law has been lauded as one of the best in our nation. Please **support** HB 622 as it was **originally** introduced to remove the sunset date and make this law permanent. Thank you for the opportunity to submit testimony on HB 622, HD1.

Aloha,

Brenda Ching

Email: [brenching@juno.com](mailto:brenching@juno.com)

**Larry Geller**  
Honolulu, HI 96817

HB622  
JDL  
Thursday, March 28, 2013  
10:30 a.m.  
Room 016

COMMITTEE ON JUDICIARY AND LABOR  
Senator Clayton Hee, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair

March 27, 2013

**Re: HB622 - Relating to Evidence ("Hawaii Shield Law")**

**In Support--of original House wording**

Sen. Hee, Sen. Shimabukuro, and members of the Committee:

This is to request that your committee make permanent the "Hawaii Shield Law" **without the amendment added by the House.**

The current law has been in effect for five years and has been fully effective in the rare instances when it has been invoked.

We are in a period of transition as news coverage moves from traditional media increasingly to on-line resources. Hawaii's law has been looked upon as a model law by professional organizations such as the SPJ (Society of Professional Journalists) and others. It protects the public's right to know and accommodates the migration to on-line reporting. The HD1 amendments represent a step backwards in time and should be removed.

Larry Geller

## hee2 - Kathleen

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 26, 2013 8:42 PM  
**To:** JDLTestimony  
**Cc:** barbarapolk@hawaiiintel.net  
**Subject:** Submitted testimony for HB622 on Mar 28, 2013 10:30AM

### HB622

Submitted on: 3/26/2013

Testimony for JDL on Mar 28, 2013 10:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara B. Polk	Individual	Comments Only	No

Comments: Senator Hee and Members of the Judiciary and Labor Committee: I regard this bill as perhaps the most important bill this session for the preservation of a democratic society! HB 622 allows professional journalists to maintain the anonymity of sources who provide sensitive information--an essential to investigative reporting and the public's right to know. However, while HD 1 extends this "shield" to certain non-traditional journalists, section (b)(4) leaves unclear whether that protection will exist in any given case. This will necessarily result in a chilling effect on the willingness of individuals to provide information. I urge that you delete (b)(4). I also urge that you delete section (c)(3) that would allow disclosure of sources in felony or civil cases--again, people with information in such potential cases would be unlikely to reveal what they know. Therefore, there is no gain by including this section. Because of its importance to democratic society, I urge that you pass HB622, with the amendments suggested above. Thank you.

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**hee2 - Kathleen**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 26, 2013 10:08 AM  
**To:** JDLTestimony  
**Cc:** surf77@mac.com  
**Subject:** Submitted testimony for HB622 on Mar 28, 2013 10:30AM

**HB622**

Submitted on: 3/26/2013

Testimony for JDL on Mar 28, 2013 10:30AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
robert duerr	Individual	Oppose	No

Comments: Currently, House Bill 622 amending the shield law is now in the hands of the Judiciary and Labor Committee, chaired by Sen. Clayton Hee. With the investigative news reporter being downsized to extinction, the public's right to know is jeopardized. With media consolidation snowballing, independent whistle blowers in non-traditional media positions like blogs, webcasts and public access are increasingly more important in breaking stories. HB622 wants to give them no Constitutional protection stating that non-traditional journalists are not journalists. However, the fact that HB622 would allow the Attorney General to abscond their sources and notes is prima facia evidence that they are in fact legitimate investigative journalists. Protect the Freedom of the Press.

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House Bill 622, HD1, Relating to Evidence  
Senate Committee on Judiciary and Labor  
Thursday, March 28, 2013

Chair Clayton Hee, Vice Chair Maile Shimabukuro and members:

My name is Stephen Downes. I have been a newspaper journalist for more than 30 years and I am testifying on behalf of the journalist's shield law (Act 210), and against proposed amendments to the law.

House Bill 622 would make the permanent the journalist's shield law, originally enacted as Act 210 in 2008. Act 210 provides important protections for journalists who need to shield their sources and unpublished information from compelled disclosure in a legal proceeding. Like similar protections for journalists in 48 other states, the Act strives to ensure that the essential work of a free press in our democracy—as enshrined in the First Amendment—will not be abridged by those who would confiscate a journalist's work for their own ends.

Act 210 is the product of long negotiations among key stakeholders, including the media, experts in media law, the state Attorney General and the state Judiciary. At the request of the Legislature, the Supreme Court's Standing Committee on Evidence carefully reviewed the Act. The Committee recommended that the Act, *as written*, be codified under Chapter 621. Importantly, the Committee made no recommendations to amend the Act.

Unfortunately, House Draft 1 of House Bill 622 introduces amendments that significantly weaken Act 210, and for no good reason. The bill would eliminate protections for any information gathered by a journalist—including her sources—that might have any relation to a “potential felony” or “serious crime” or any civil action, rather than a civil action for defamation.

These changes alone would essentially gut Act 210.

Neither “potential” felony nor “serious” crime are defined in the Act, and could encompass virtually any criminal investigation. Furthermore, exempting all civil actions would make the work product of a journalist fair game for anyone who wants to file a lawsuit. The chilling effect is obvious: An investigative journalist could no longer offer confidentiality to sources, or even gather material for a sensitive story, without assuming that all of it can be confiscated by the government or a private party. In effect, the journalist could be forced into becoming an arm of the law—a clear violation of the principle of a free press.

Yet even more proposals to weaken Act 210 have been recommended. The current Attorney General proposes to eliminate protections for journalists who don't work for traditional media such as newspapers or television—so-called “non-traditional” journalists. It should be obvious to any consumer of news that the media landscape is rapidly changing. Journalists don't just work for print media and television anymore. Much of the work in this profession is produced on “non-traditional” platforms, including Politico, ProPublica, Slate, and here at home, Civil Beat and Hawaii Reporter. Independent journalists and documentary filmmakers, using standard journalistic practices, also produce important work in the public interest.

Act 210 recognizes what we already know—that it's the journalist, not the platform, who is protected by the shield law. The Act wisely restricts the scope of the protection by providing a clear way to establish if the individual seeking protection is a legitimate journalist. In a democratic society, the right to define what constitutes a free press does not, and should not, rest with the Attorney General.

I respectfully request that this Committee restore Act 210 to its original language and remove the sunset provision, allowing it to be codified into statute as written.

Mahalo,

Stephen Downes

TESTIMONY IN SUPPORT OF HB 622 HD 1 RELATING TO EVIDENCE

To: Senate Committee on Judiciary and Labor  
Hearing: 10:30 a.m. March 28, 2013  
Room 016 State Capitol

From: Chris Conybeare

Chair Hee, Vice-Chair Shimabukuro, and Members of the Committee

I am a member of the Media Council Hawaii and fully support the testimony submitted by the Hawai'i Shield Law Coalition:

*The Hawai'i Shield Law Coalition supports HB 622 Relating to Evidence, which would remove the June 30, 2013 sunset provision of Act 210, Session Laws of Hawaii 2008. However, we oppose the amendments proposed by the House Judiciary Committee.*

I am submitting this personal testimony as a television journalist, having been involved in news and public affairs reporting, as well as documentary production in Hawai'i, for 30 years. I also have acted as a consultant to a variety of documentary filmmakers, including winners of the Academy Award, Peabody Award, and the Emmy.

I am proud that Hawai'i is recognized by both national and local organizations as having one of the best shield laws in the nation. These laws help create trust between journalists the public, allowing for the free flow of information that is vital for a democracy.

In addition to protecting sources of information, they also inhibit the chilling practice of evidentiary "fishing expeditions" on the part of civil litigators that are unrelated to the story reported. This was particularly important to Hawai'i filmmaker, Keoni Alvarez who is making a film about Native Hawaiian burial practices. Our current law was employed to protect Keoni's interview subjects from disclosure of identities and or information about cultural practices deemed not appropriate for release beyond the Hawaiian community.

I am particularly proud that Hawai'i's law permits non-traditional journalists to seek protection if they persuade the court that they are functioning as journalists in the dissemination of news. Note: the law does not apply to cases of defamation.

With the changing media landscape, more and more news will be brought to the public by non-traditional journalists, freelancers, and concerned citizens. Much of what we have learned about the wars in Iraq and Afghanistan, the Arab Spring, and the current conflict in Syria comes from just these sources. Hawai'i's Shield law has been crafted for the 21<sup>st</sup> Century and has been in existence for 5 years without causing problems. I'm proud that our state has taken leadership in this respect. National sources, like the Society for Professional Journalists, indicate that if proposed amendments to the law are adopted, Hawai'i will drop from its leadership position to the bottom among the 40 shield law states.

Please affirm Hawai'i's leadership, remove the sunset date, and pass HB 622 without amendment. Thank you.

Chris Conybeare  
625 Iolani Ave., #504  
Honolulu, HI 96813  
[Conybeare@msn.com](mailto:Conybeare@msn.com)

**hee2 - Kathleen**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 27, 2013 9:13 AM  
**To:** JDLTestimony  
**Cc:** miike@mikeswerdlow.com  
**Subject:** \*Submitted testimony for HB622 on Mar 28, 2013 10:30AM\*

**HB622**

Submitted on: 3/27/2013

Testimony for JDL on Mar 28, 2013 10:30AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
michael swerdlow	Individual	Support	No

Comments:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 27, 2013 8:46 AM  
**To:** JDLTestimony  
**Cc:** pattio57@mac.com  
**Subject:** \*Submitted testimony for HB622 on Mar 28, 2013 10:30AM\*

**HB622**

Submitted on: 3/27/2013

Testimony for JDL on Mar 28, 2013 10:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Patricia Osborne	Individual	Support	No

Comments:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 27, 2013 4:11 AM  
**To:** JDLTestimony  
**Cc:** jemray@hawaii.rr.com  
**Subject:** Submitted testimony for HB622 on Mar 28, 2013 10:30AM

**HB622**

Submitted on: 3/27/2013

Testimony for JDL on Mar 28, 2013 10:30AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Janet Murray	Individual	Support	No

Comments: We support HB 622

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 26, 2013 11:15 PM  
**To:** JDLTestimony  
**Cc:** sherrianwitt@aol.com  
**Subject:** Submitted testimony for HB622 on Mar 28, 2013 10:30AM

**HB622**

Submitted on: 3/26/2013

Testimony for JDL on Mar 28, 2013 10:30AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
sherrian witt	Individual	Support	No

Comments: I support restoring this bill to the original wording of the bill. As our society has changed and the role of those reporting events to the public have changed ie, bloggers, alternative press, and part time journalist; I support this bill to be returned to its original wording. It is important that the protection of those who report to the public be assured protection under the law thus insuring our democratic freedoms to speak out against government tierney with protection of their sources. Those who speak against the protection of our 21st Century societal reporters in their new and various forms are those who work for the government and our bound by their powerful positions to disempower those who would speak out for the public. Let us not forget the original intent of our first amendment rights.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 26, 2013 10:35 PM  
**To:** JDLTestimony  
**Cc:** shaglund@hotmail.com  
**Subject:** \*Submitted testimony for HB622 on Mar 28, 2013 10:30AM\*

**HB622**

Submitted on: 3/26/2013

Testimony for JDL on Mar 28, 2013 10:30AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Sue Haglund	Individual	Support	No

Comments:

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**Sent:** Tuesday, March 26, 2013 9:16 PM  
**To:** JDLTestimony  
**Cc:** hokuokekai50@msn.com  
**Subject:** \*Submitted testimony for HB622 on Mar 28, 2013 10:30AM\*

**HB622**

Submitted on: 3/26/2013

Testimony for JDL on Mar 28, 2013 10:30AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mary Lacques	Individual	Support	No

Comments:

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**Sent:** Tuesday, March 26, 2013 9:09 PM  
**To:** JDLTestimony  
**Cc:** merway@hawaii.rr.com  
**Subject:** Submitted testimony for HB622 on Mar 28, 2013 10:30AM

**HB622**

Submitted on: 3/26/2013

Testimony for JDL on Mar 28, 2013 10:30AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
marjorie Erway	Individual	Support	No

Comments: Please RESTORE THE ORIGINAL VERSION!! Mahalo.

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**Sent:** Tuesday, March 26, 2013 8:41 PM  
**To:** JDLTestimony  
**Cc:** CKing@hawaii.rr.com  
**Subject:** Submitted testimony for HB622 on Mar 28, 2013 10:30AM

**HB622**

Submitted on: 3/26/2013

Testimony for JDL on Mar 28, 2013 10:30AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Cheryl King	Individual	Support	No

Comments: I support this bill. We are all familiar with cases in which reporters exposed serious malfeasance or wrote in-depth stories thanks to sources who did not want to be identified. The strong shield law we have now, without amendment, is what we need to protect both our reporters and the Hawaii citizens who want the facts.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 26, 2013 6:34 PM  
**To:** JDLTestimony  
**Cc:** mh@interpac.net  
**Subject:** Submitted testimony for HB622 on Mar 28, 2013 10:30AM

**HB622**

Submitted on: 3/26/2013

Testimony for JDL on Mar 28, 2013 10:30AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Cory Harden	Individual	Support	No

Comments: It will help public officials if they can say "No, I can't grant that favor. Anyone can speak to a reporter, who can hide their identity in spite of legal threats, and leave me in deep kim chee!"

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**Sent:** Tuesday, March 26, 2013 6:24 PM  
**To:** JDLTestimony  
**Cc:** shannonkona@gmail.com  
**Subject:** \*Submitted testimony for HB622 on Mar 28, 2013 10:30AM\*

**HB622**

Submitted on: 3/26/2013

Testimony for JDL on Mar 28, 2013 10:30AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Shannon Rudolph	Individual	Support	No

Comments:

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WRITTEN TESTIMONY OF LORI SILVA

In Support of House Bill 622, H.D. 1 Relating to Evidence

Chairman Hee and Members of the Judiciary Committee:

My name is Lori Silva, and I am the News Director of KHON2 (Fox). I write you today to express the continued support of KHON2 and its corporate parent (LIN Television Corporation, d/b/a LIN Media) for Hawaii's Shield Law in its present form. We therefore support HB 622, which would remove the June 31, 2013 sunset provision of Act 210, Session Laws of Hawaii 2008. For the same reasons, we oppose other proposed amendments to the Shield Law.

Hawaii's shield law has successfully protected and nourished the free flow of information since its enactment, and we encourage you to ensure that it continues to do so. Newsrooms need the trust of their sources, protection from burdens associated with "fishing expeditions", and a separateness from public officials in order to do their jobs in the public interest.

Courts have long recognized that without the trust of sources, important stories will not be told and the public will be worse off. For example, one court noted "Many doors will be closed to reporters who are viewed as investigative resources of litigants." *United States v. Marcos*, 17 Med. L. Rptr. (BNA) 2005. Hawaii's shield law, in its current form, bolsters this trust between a news reporter and a source. If a source believes that a reporter will simply provide his or her identity or the reporter's notes to be used in court, a source may never talk to the reporter in the first instance.

~~In addition to the risks to sources, the time and resources required to respond to "fishing expedition" requests without a strong shield law takes reporters off the beat and editors away from true newsgathering. Indeed, the Ninth Circuit has recognized that "society's interest in protecting the integrity of the newsgathering process, and in ensuring the free flow of information to the public, is an interest of sufficient importance to justify some incidental sacrifice of sources of facts needed in the administration of justice." *Shoen v. Shoen*, 5 F.3d 1289 (9<sup>th</sup> Cir. 1993). I can report from KHON2's sister stations in other states that "fishing expeditions" by litigants are a reality when no shield law protection exists. The mere existence of a shield law protects against many of the most egregious cases, and if necessary, the shield law protects KHON2 against other such requests.~~

~~Finally, the press is meant to be separate from the government. Use of the press as extensions of the long arm of law enforcement by way of probing law enforcement subpoenas harms that independence and lowers the citizen's opinion of both the press and the government. The Ninth Circuit has expressly recognized "the disadvantage of . . . appearing to be an investigative arm of the judicial system or a research tool of the government . . ." *Id.*~~

For these reasons, and others, I encourage you to extend Hawaii's shield law and oppose attempts to weaken it. An extension of the Hawaii shield law is a win for freedom of the press, the free flow of ideas, and the application of First Amendment principles.

Respectfully Submitted,



Lori Silva  
KHON2 News Director

**TESTIMONY IN SUPPORT OF HB 622 HD  
RELATING TO EVIDENCE**

*Submitted March 25, 2013 for the March 28 hearing at  
10:30 a.m. in room 016 by Hawaii Reporter*

Dear Chair Clayton Hee and Members of the Senate  
Judiciary and Labor Committee:

Hawaii Reporter is a member of the Hawaii Shield Law Coalition, and **we are submitting testimony in support of HB 622 Relating to Evidence**, which would remove the June 30, 2013, sunset provision of Act 210, Session Laws of Hawaii 2008.

Like others in the coalition, including the Hawaii Chapter of Society of Professional Journalists, Media Council Hawaii, The Big Island Press Club, Hawaii Publishers Association, Hawaii News Now, Honolulu Civil Beat, Honolulu Star Advertiser, KHON-2 News, KITV-4 News, PacificBasin Communications, Ka Leo O Hawaii, Spotlight Hawaii, Hawaii Tribune-Herald and West Hawaii Today, **we oppose the amendments proposed by the House Judiciary Committee.**

Act 210, or the "Shield Law," provides a limited privilege to journalists and those acting in similar capacity against compulsory disclosure of confidential sources and unpublished materials and correspondence. The House version diminishes the law.

*Hawaii Reporter* is a direct beneficiary of the media shield law and has used it to block subpoenas of our notes, sources and other unpublished materials in relation to the breach of the Ka Loko dam. In the civil case, the defendant tried to obtain information related to a Marh 2007, 21-minute investigative television report *Hawaii Reporter* produced in

partnership with *ABC 20/20* on the March 14, 2006 dam breach. That subpoena was not acted on after Hawaii's law passed protecting journalists in civil cases. The subpoena in this case was used to intimidate our news organization and prevent the reporters from attending court hearings related to the breach.

When *Hawaii Reporter* editor Malia Zimmerman was subpoenaed to the grand jury by the attorney general in the criminal case in November 2008, she and *Hawaii Reporter* complied with the request for testimony, documentation and transcripts related to the criminal manslaughter indictment.

*Hawaii Reporter* has won top awards for investigative reports on human trafficking from Laos. We have many confidential sources, mainly the trafficking victims themselves, whose lives would be in jeopardy if we disclosed their names. We meet with the victims and our translators in the middle of the night when the victims are able to quietly leave the farms or when they are hospitalized from pesticide poisoning. We have interviewed dozens of labor trafficking victims in this manner. The law protects our reporters and sources in these cases. Some of the traffickers have enslaved these workers for more than 10 years here and their hardship had been largely unnoticed until we were able to get the victims to come forward and identify the main traffickers.

We work closely with the Pacific Alliance to Stop Slavery and other advocacy groups on identifying sex and labor trafficking victims and their perpetrators in hopes our reports will inspire law enforcement action and bring justice to an oppressive situation. Some of the people we interview are minors who are sex trafficking victims and we cannot disclose their names without putting them in jeopardy. In fact, for our video documentaries, we disguise their voices and faces. The law, as it is currently enacted, protect these



sources and our correspondence with them.

As you are aware, a native Hawaiian filmmaker working on PBS documentary about ancient burial sites in Haena, Kauai, also successfully used the law to protect his unpublished video and sources when the landowner attempted to obtain his video of native Hawaiian protestors for a civil case.

Many other media organizations in Hawaii have benefitted from the shield law because it protects them from being drawn in as an outside party in civil disputes.

As the Hawaii Shield Law Coalition points out, 39 states and the District of Columbia currently have shield laws. During the five years the Hawaii law has existed there has been no reported problems with the law.

The Judiciary's Evidence Committee has reviewed the law as requested by the Legislature and it recommended that "the sunset provision be eliminated and that Act 210 be integrated in HRS Ch. 621."

The Student Press Law Center has described Hawaii's law as "the best in the country in terms of the clarity and breadth of its coverage." It has been cited as a model for a national shield law.

Hawaii has long prided itself on being at the forefront of progressive legislation. This law should be counted as one of the state's major achievements in protecting dissemination of news and information in the public interest and protecting a free and independent press. We urge you to continue your support of this bill as you have in the past. Thank you for your consideration.

*Submitted by: Hawaii Reporter, 6600 Kalanianaʻole Hwy,  
Ste 212, Honolulu, Hawaii 96825 (808) 306-3161  
Malia@hawaiireporter.com*

**hee2 - Kathleen**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 25, 2013 12:08 PM  
**To:** JDLTestimony  
**Cc:** tabraham08@gmail.com  
**Subject:** Submitted testimony for HB622 on Mar 28, 2013 10:30AM

**HB622**

Submitted on: 3/25/2013

Testimony for JDL on Mar 28, 2013 10:30AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Troy Abraham	Individual	Support	No

Comments: I support passage of bill forcing all media leak all truth because everybody in the world deserves to know what was hidden from us after all it part of "open government" initiative.

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## hee2 - Kathleen

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 27, 2013 12:47 PM  
**To:** JDLTestimony  
**Cc:** marypinckneypratt@gmail.com  
**Subject:** Submitted testimony for HB622 on Mar 28, 2013 10:30AM

### HB622

Submitted on: 3/27/2013

Testimony for JDL on Mar 28, 2013 10:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Mary Pratt	Individual	Support	No

Comments: I agree with the below statements written by Nancy Cook Lauer: What if Watergate had never happened? What if whistleblowers like Erin Brockovich were afraid to expose corporate and government wrongdoing that endanger people's lives? What would our nation look like if everyday citizens were intimidated into keeping crucial information from the press? What if the police, or trial lawyers seeking millions of dollars in damages, didn't have to do their own legwork, bringing that burden of proof to a jury in the tried-and-true tradition of a judicial system guaranteeing civil rights? What if they could, instead, just scribble out a subpoena and grab a reporter's notes about things that were told in trust and confidence? That, my friends, is life without a shield law, also known as reporter's privilege. It's called a privilege for reporters, but the ones it really protects are the citizens, the whistleblowers. Hawaii has such a shield law. Or it does, at least, until June 30. That's the date the current law runs out, unless lawmakers make it permanent. It's important that the law be made permanent without watering it down by exempting civil litigation and serious crime involving unlawful injury to persons or animals. Leaving in these amendments by the House Judiciary Committee would reduce coverage of the law to one of the lowest levels among the 40 jurisdictions that have shield laws, according to the Society of Professional Journalists. This limited news media privilege against the compelled disclosure of sources and unpublished information has successfully protected a journalist and a documentary film producer in Hawaii since it was enacted almost five years ago. More importantly, it has stood as a model for other states and a beacon to a free press, preventing untold subpoenas and threats to the exercise of journalistic endeavors. It is difficult to quantify the negative, so it is not known how many journalists were not compelled to turn over their notes and sources because of the shield law. In short, however, there has been no documented harm to the state because of the shield law, and at least two cases where the law served its purpose in furthering a free press. Thirty-eight states, plus the District of Columbia, have substantial protections in place, according to the The Reporters Committee for Freedom of the Press. Should Hawaii -- the Aloha State, the state that embraces privacy and individual liberties even more than most -- be the state that fails to protect that brave individual who comes forward to voice concerns about wrongdoing and corruption? I hope not.

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## TESTIMONY IN SUPPORT OF HB 622 HD 1 RELATING TO EVIDENCE

Chair Hee and Members of the Judiciary Committee:

Pacific Basin Communications, publisher of 11 local magazines, including Honolulu, Hawaii Business, Mana and Hawaii, supports HB 622 Relating to Evidence, which would remove the June 30, 2013 sunset provision of Act 210, Session Laws of Hawaii 2008. However, we oppose the amendments proposed by the House Judiciary Committee.

The "Shield Law" provides a limited privilege to journalists, and those acting in similar capacity, against compulsory disclosure of confidential sources and unpublished information. That law allows free and independent reporting in Hawaii, which is so important to public policy debates and informed decision-making. The House amendments would seriously diminish the effectiveness of this law.

We believe the Shield Law as it was enacted five years ago should become permanent. The law was the product of long and detailed negotiations between representatives of the news media and the then-Attorney General. Compromises were made on both sides. The bill that ultimately became Act 210 helps protect the free flow of information in a democratic society while balancing the need for information in the pursuit of justice.

Hawaii has long prided itself on being at the forefront of progressive legislation. This law should be counted as one of the state's major achievements in protecting dissemination of news and information in the public interest and protecting a free and independent press.

Thank you for your consideration.