

SB 2376

Measure Title: RELATING TO ADVERTISING.

Report Title: Cybertrafficking; Indecent Advertising

Description: Prohibits advertisements for massage, relaxation, spa, escort, or body rubs from including certain types of pictures and from referring to personal physical qualities of a person other than the hands, wrists, and forearms.

Companion: HB1927

Package: None

Current Referral: CPN, JDL

Introducer(s): CHUN OAKLAND, Shimabukuro, L. Thielen

**PRESENTATION OF THE
BOARD OF MASSAGE THERAPY**

**TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION**

**TWENTY-SEVENTH LEGISLATURE
Regular Session of 2014**

**Tuesday, February 4, 2014
9:00 a.m.**

TESTIMONY ON SENATE BILL NO. 2376, RELATING TO ADVERTISING.

**TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:**

My name is Kenyatta Nichols, Executive Officer for the Board of Massage Therapy ("Board"), of the Department of Commerce and Consumer Affairs ("Department"), Professional and Vocational Licensing Division. The Board appreciates the opportunity to provide comments on Senate Bill No. 2376, Relating to Advertising.

The purpose of this bill is to prohibit advertisements for massage, relaxation, spa, escort or body rubs from including certain types of pictures and from referring to personal physical qualities of a person other than the hands, wrists, and forearms.

The language in Senate Bill No. 2376, page 1 lines 4 to 17, which prohibits and restricts certain massage advertising, is very similar to the language in paragraphs (4), (5), and (6) of section 452-23(a), Hawaii Revised Statutes ("HRS"), a copy of which is attached to this testimony for your reference.

As reflected in the notes to this statute, the Hawaii Attorney General's Office ("AG") in Att. Gen. Op. 98-02 has opined that paragraphs (4), (5) and (6) of section 452-23(a), HRS, were overly broad and infringed upon commercial speech rights afforded by the First Amendment. The opinion acknowledges the Board's attempt to

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implement the legislature's substantial interest in separating the legitimate profession of massage therapy from illegal activities such as prostitution, but concluded that paragraphs (4), (5), and (6) of section 452-23(a), HRS, did not directly promote the legislature's interest in separating the legitimate profession of massage therapy from illegal activities. A copy of the published opinion is attached to this testimony.

Based upon the AG's legal opinion 98-02, the Board has not enforced paragraphs (4), (5), and (6) of section 452-23(a), HRS, restrictions on massage advertising.

While Senate Bill No. 2376 is clearly not the same as section 452-23(a), HRS, there is enough similarity to the statute that the Department has concerns about whether these provisions could be applied to the affected licensees.

Thank you for the opportunity to provide comments on Senate Bill No. 2376.

March 3, 1998

The Honorable Bertha C. Kawakami
Representative, Fourteenth District
The Nineteenth Legislature
State Capitol, Room 434
Honolulu, Hawaii 96813

Dear Representative Kawakami:

Re: Advertisements by Licensed Massage Therapists

This opinion is in response to your request as to whether there are constitutional problems with section 452-23(a)(4), Hawaii Revised Statutes (HRS),⁽¹⁾ pertaining to advertisements by licensed massage therapists. Your request arises from an inquiry to your office by a massage therapist who was cited for violating section 452-23(a)(4) by the prosecuting agency of the licensing authority. The massage therapist questioned whether this statute was overly restrictive and unconstitutional.

In this instance, based upon our review of United States Supreme Court rulings, we conclude that portions of the statute are overly broad and infringe upon the constitutionally protected commercial speech rights of people advertising massage services. While the statute attempts to advance the legislature's substantial interest in separating the legitimate profession of massage therapy from illegal activities, portions of the statute exceed the allowable limits for regulation of commercial speech and are, therefore, constitutionally infirm. [\(top\)](#)

Although you set forth specific questions pertaining to section 452-23(a)(4), including its applicability to the regulation of trademarks, we have taken the liberty of addressing the broader constitutional issues raised rather than limiting our inquiry to the questions as stated in your request. The United States Supreme Court rulings reviewed in this opinion govern federal and state law, and prescribe the parameters for regulating all types of commercial speech. Similar constitutional principles govern regulation of commercial speech whether the speech appears in the form of a trademark, or an advertisement, or both. Therefore, we believe our conclusions set forth below are responsive to your concerns.

Discussion

Section 452-23(a) states:

§452-23 Advertising. (a) It is a misdemeanor for any person, including a person who is exempt by section 452-21 from this chapter, to advertise with or without any limiting qualifications as a massage therapist unless the person holds a valid license under this chapter. Further, it shall be a violation of this chapter for any person to advertise:
[\(top\)](#)

- (1) As a massage therapist or a massage therapy establishment unless the person holds a valid license under this chapter in the classification so advertised;
- (2) By combining advertising for a licensed massage therapy service with escort or dating services;
- (3) As performing massage in a form in which the person has not received training, or of a type which is not licensed or otherwise recognized by statute or administrative rule;⁽²⁾

(4) By using in any mass distribution, print advertisements such as newspaper advertisements, or telephone directory listings, pictures depicting the human form other than hands, wrists, and forearms;

(5) By using any term other than therapeutic massage or massage therapy to refer to the service; or

(6) By referring to any personal physical qualities of the practitioner. ([top](#))

"Advertise" as used in this section includes, but is not limited to, the issuance of any card, sign, or device to any person; the causing, permitting, or allowing of any sign or marking on or in any building, vehicle or structure; advertising in any newspaper or magazine; any listing or advertising in any directory under a classification or heading that includes the word "massage therapist" or "massage therapy establishment"; or commercials broadcast by airwave transmission. ([top](#))

(Emphasis added.)

Generally, statutes are presumed constitutional. The Supreme Court of Hawaii has consistently held that an enactment of the legislature is presumptively constitutional, and a party challenging the statute has the burden of showing the unconstitutionality beyond a reasonable doubt. "[T]he constitutional defect must be 'clear, manifest and unmistakable.'" *Sifagaloa v. Board of Trustees of the Employees' Retirement Sys.*, 74 Haw. 181, 191, 840 P.2d 367, 371 (1992) (citing *Blair v. Cayetano*, 73 Haw. 536, 542, 836 P.2d 1066, 1069 (1992)); *Schwab v. Ariyoshi*, 58 Haw. 25, 31, 564 P.2d 135, 139 (1977). ([top](#))

1. Legislative History of Section 452-23(a)

Although your opinion request focuses only upon section 452-23(a)(4), we also find paragraphs (5) and(6) troublesome. Essentially, these provisions prohibit massage therapy advertising that: (1) depicts the human form other than hands, wrists, and forearms; (2) uses any term other than therapeutic massage or massage therapy; or (3) refers to any personal physical qualities of the practitioner. ([top](#))

The legislative history reflects that massage therapists supported these restrictions because they wanted to "promote a more professional image" and wanted to "disassociate themselves from escort or dating services which are associated with illegal activity." H. Stand. Comm. Rep. No. 1080-90, Haw. H.J. 1261, 1262 (1990). In addition, the prohibition on depictions of human forms was in response to advertisements at that time which the massage therapists found "objectionable" and which did "not portray the type of service massage therapists perform." *Id.*

The House Committees on Consumer Protection and Commerce and on Judiciary concluded that:

Although commercial speech is protected by the first amendment, commercial speech may be restricted if the state has a substantial interest which cannot be achieved by a more carefully designed restriction. Your Committees believe that the governmental interest to be served in not deceiving or misleading the public into believing that all massage therapists are fronts for illegal activity is strong; the proposed regulation advances that interest; and the regulation proposed is not more extensive than necessary since other avenues of relief have not been successful. ([top](#))

Id. (emphasis added).

Such restrictions were believed necessary in advertising "to ensure honesty in representations of services offered and to prohibit advertising practices which would mislead the public or which would imply special techniques or services which are not actually available or are not permitted by state law or rule." S. Conf. Comm. Rep. No. 122, Haw. S.J. 818 (1990); H. Conf. Comm. Rep. No.

122, Haw. H.J. 817 (1990). The conference committee found that:

[A]lthough massage is a skilled profession with a long and honorable tradition in Hawaii and throughout the world, it remains susceptible to abuse or misunderstanding when advertised in manners designed to deceive the customer or cater to prurient interests. Your Committee also finds that this bill will enable effective enforcement of the laws and rules governing massage, thus protecting legitimate practitioners and the consuming public. ([top](#))

Id. (emphasis added).

2. Commercial Speech Case Law

The United States Supreme Court has clearly established that commercial speech is not stripped of First Amendment protection⁽³⁾ merely because it appears in the form of a paid commercial advertisement. *Bigelow v. Virginia*, 421 U.S. 809 (1975) (statute that criminalized abortion clinic advertisement in newspaper struck down).⁽⁴⁾ Commercial speech is expression that relates solely to the economic interest of the speaker and its audience, and does no more than propose a commercial transaction. *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n*, 447 U.S. 557 (1980) (regulation banning advertising that promoted the use of electricity violated the First and Fourteenth Amendments) (citing *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 762 (1976));⁽⁵⁾ *Bates v. State Bar of Arizona*, 433 U.S. 350, 363-64 (1977) (restraint against attorney advertising availability and terms of legal services struck down). ([top](#))

In rejecting the paternalistic view that government has complete power to suppress or regulate commercial speech to protect the public, the *Central Hudson* decision fashioned a four-part test for determining the validity of government restrictions on commercial expression.

At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest affected, and whether it is not more extensive than is necessary to serve that interest. ([top](#))

Central Hudson, 447 U.S. at 566.⁽⁶⁾

Subsequent case law has continued to refine what constitutes permissible regulation of commercial speech. In 1982, the Court addressed whether the advertisement was likely to deceive. In *re R.M.J.*, 455 U.S. 191, 202 (1982).⁽⁷⁾ Striking down ten categories of information a lawyer could include in advertising, the Court held that states may not impose an absolute prohibition "on certain types of potentially misleading information, e.g., a listing of areas of practice, if the information also may be presented in a way that is not deceptive." In *re R.M.J.*, 455 U.S. at 203. The Court acknowledged that the potential for deception and confusion is particularly strong in the context of advertising professional services. However, as the Court in *Bates* suggested, the remedy is "not necessarily a prohibition but preferably a requirement of disclaimers or explanation." Id. ([top](#))

The Court in *Peel v. Attorney Registration & Disciplinary Comm'n*, 496 U.S. 91, 110 (1990), affirmed that a "[s]tate may not, however, completely ban statements that are not actually or inherently misleading." Relying on *In re R.M.J.*, 455 U.S. at 203, the Court ruled that the State could not prohibit *Peel* from holding himself out as a specialist in a particular area of law because this communication did not contain any false or misleading representations. *Peel*, 496 U.S. at

110-11. ([top](#))

In *Ibanez v. Florida Department of Business & Professional Regulation, Board of Accountancy*, 512 U.S. 136 (1994), the Court held that the state's censure of Ibanez for "false, deceptive, and misleading" advertising cannot be upheld when Ibanez used truthful, accurate designations in her advertising. The state's burden in seeking to uphold its restriction⁽⁸⁾ "is not slight; the 'free flow of commercial information is valuable enough to justify imposing on would-be regulators the costs of distinguishing the truthful from the false, the helpful from the misleading, and the harmless from the harmful.'" *Ibanez*, 512 U.S. 143 (quoting *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626, 646 (1985)).

In *Zauderer*, the Court rejected the state's argument that it was too difficult to distinguish truthful from deceptive advertisements. 471 U.S. at 647. Despite arguments by the State that "illustrations may produce their effects by operating on a subconscious level," and thus visual advertising was particularly difficult to police, the Court held that restrictions prohibiting an accurate representation of a Dalkon Shield, which had no features that were likely to deceive, mislead, or confuse the reader, must be scrutinized under the Central Hudson test. *Zauderer*, 471 U.S. at 647-49. The State carries a heavy burden in justifying the prohibition of accurate, truthful information but failed to present any evidence showing that "the potential abuses associated with the use of illustrations in attorneys' advertising cannot be combatted by any means short of a blanket ban." *Zauderer*, 471 U.S. at 648. The regulation, therefore, failed under the fourth part of the Central Hudson test. *Zauderer*, 471 U.S. at 649. ([top](#))

Supreme Court decisions also have clarified Central Hudson's standard that the government's restrictions may be no more broad or more expansive than "necessary" to serve its substantial interest. *Central Hudson*, 447 U.S. at 566. The word "necessary" does not always mean "least restrictive means." Rather, the court will uphold a restriction so long as it is narrowly tailored and meets the other requirements of Central Hudson. *Board of Trustees of the State University of N.Y. v. Fox*, 492 U.S. 469, 478 (1989). The fit between the restriction and the government interest need not be perfect, but reasonable. *Fox*, 492 U.S. at 480. See *Posadas de Puerto Rico Assocs. v. Tourism Co. of Puerto Rico*, 478 U.S. 328, 341 (1986) (statute restricting advertising of casino gambling to nonresidents of Puerto Rico was an appropriate regulation which directly advanced the government's interest in the health, safety, and welfare of its citizens); *Ward v. Rock Against Racism*, 491 U.S. 781, 798 (1989) (state's content-neutral sound-amplification guidelines are reasonable regulations of place and manner of protected speech); *United States v. Edge Broadcasting Co.*, 509 U.S. 418 (1993) (restriction against gambling advertising was a reasonable law directly advancing the state's interest). ([top](#))

In *Edenfield v. Fane*, 507 U.S. 761 (1993), the Court acknowledged the state had substantial interest in protecting consumers from fraud or overreaching certified public accountants (CPAs), as well as in maintaining the professional appearance of CPAs. However, the Court was not convinced that CPAs who advertised were "obviously in need of business and may be willing to bend the rules" and struck down a Florida ban on in-person solicitation by CPAs. *Edenfield*, 507 U.S. at 765. Furthermore, the Court required a "governmental body seeking to sustain a restriction on commercial speech [to] demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree." *Edenfield*, 507 U.S. at 770-71. ([top](#))

In *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410 (1993), the Court further reviewed the balance between the governmental interest and the degree of permissible regulation and ruled that the city's attempt to ban news racks for commercial handbills was not a "reasonable fit" between its legitimate interest in safety and esthetics and its choice of means to achieve that interest. Rather than regulating the size, shape, appearance, or number of news racks, the city made a distinction between commercial and noncommercial speech. By allowing other news racks of noncommercial publications to remain, the city's focus only on commercial speech bore no reasonable relationship to its asserted interests. 507 U.S. at 417. ([top](#))

In *Rubin v. Coors Brewing Co.*, 514 U.S. 476 (1995), the Court unanimously upheld the lower court decision that the First Amendment was violated by the 1935 Federal Alcohol Administration Act's prohibition against disclosing alcohol content on beer labels unless required by state law. Although the regulation advanced one of the government's interests in curbing "strength wars" among brewers of malt liquor, the ban violated the First Amendment because it failed to advance that interest in a direct and material way. Other alternatives such as directly limiting the alcohol content of beers, prohibiting marketing efforts emphasizing high alcohol strength, and limiting the ban to malt liquors would be less intrusive on speech. *Rubin*, 514 U.S. at 488-91.

Most recently, the Court unanimously struck down a statute banning the advertisement of liquor except at the place of sale. *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 116 S. Ct. 1495 (1996). However, in a splintered ruling consisting of four opinions with four different approaches, in which there was no majority opinion on the commercial speech rationale, the Court illustrated the juxtaposition of two constant principles of commercial speech: one principle holding that advertising is protected by the First Amendment because it allows the free flow of ideas, and the other principle holding that government restrictions of advertisements are justified in light of a substantial government interest. ([top](#))

In evaluating the ban's effectiveness in advancing the state's interest of promoting temperance, the Court considered whether the ban was a reasonable fit. "In order for a speech restriction to pass muster under the fourth prong, there must be a reasonable fit between the legislature's goal and method." *44 Liquormart*, 517 U.S. at ____, 116 S. Ct. at 1500. In this instance, the fit was not reasonable because the state had alternatives, such as setting "minimum prices and/or increasing sales taxes on alcoholic beverages," other than a total ban on price advertising at its disposal. *Id.*

Ultimately, the Court reasoned that the prohibition against price advertising for alcohol, "like a collusive agreement among competitors to refrain from such advertising, will tend to mitigate competition," will keep alcohol prices high and might keep consumption somewhat lower. However, there was no evidence that the prohibition will significantly advance the state's interest in reducing consumption. *44 Liquormart*, 517 U.S. at ____, 116 S. Ct. at 1509-10. Thus, the Court concluded that the ban was overly broad and abridged speech in violation of the First Amendment. *44 Liquormart*, 517 U.S. at ____, 116 S. Ct. at 1515.⁽⁹⁾ Commercial speech regulation may not be sustained if it provides only ineffective or remote support for the government's purpose and fails *Central Hudson's* fourth part by being broader than necessary. *44 Liquormart*, 517 U.S. at ____, 116 S. Ct. at 1509. ([top](#))

3. Constitutionality of Section 452-23(a)

To determine whether section 452-23(a)'s proscription against certain types of advertising is constitutional,⁽¹⁰⁾ we apply *Central Hudson's* four-part test and first ask whether the speech concerns lawful activity and is not misleading. *Central Hudson*, 447 U.S. at 566. As stated above, we find the prohibitions of section 452-23(a)(4), (5), and (6) problematic as they essentially ban massage therapy advertising which: (1) depicts the human form other than hands, wrists, and forearms;⁽¹¹⁾ (2) uses any terms other than therapeutic massage or massage therapy; or (3) refers to any personal physical qualities of the practitioner.⁽¹²⁾ ([top](#))

Is a back massage unlawful activity? Is the depiction of a foot massage misleading? Is the practice of "lomilomi" or "Hawaiian massage" unlawful activity? Is the use of these terms, terms which are recognized in section 452-1, misleading? Is the reference to the Swedish or Japanese ethnicity of a massage therapist unlawful or misleading? Although a specific advertisement may be misleading or particular acts unlawful in certain circumstances, these activities are not per se unlawful or deceptive. Thus, it is our opinion that advertising that concerns lawful activity and is not misleading is entitled to a limited form of First Amendment protection. *Posadas*, 478 U.S. at 341.

[P]eople will perceive their own best interests if only they are well enough informed, and . . . the best means to that end is to open the channels of communication, rather than to close them. . . . Even when advertising communicates only an incomplete version of the relevant facts, the First Amendment presumes that some accurate information is better than no information at all. ([top](#))

Bloss, 64 Haw. at 157, 637 P.2d at 1124 (quoting Central Hudson, 447 U.S. at 562). "[D]isclosure of truthful, relevant information is more likely to make a positive contribution to decisionmaking than is concealment of such information,' [thus] only false, deceptive, or misleading commercial speech may be banned." Ibanez, 512 U.S. at 142 (quoting Peel, 496 U.S. at 108, and citing Zauderer, 471 U.S. at 638).

The second part of the Central Hudson test asks whether the governmental interest is substantial. As discussed above, the legislature's implicit concern was to prohibit advertising that would mislead the public into associating the advertised services with illegal activities such as prostitution. We believe there is no dispute that this constitutes a substantial interest justifying regulation. ([top](#))

However, if the governmental interest is substantial, the third and fourth parts of the Central Hudson test require the regulation to directly advance the government interest and be no more extensive than necessary to serve that interest. Central Hudson, 447 U.S. at 566. While section 452-23(a)'s restrictions support the State's interest in banning advertisements that solicit prostitution, section 452-23(a)(5), which proscribes the use of any term other than "therapeutic massage" or "massage therapy," also prohibits informative advertisements such as a narrative describing various massage techniques available, for example, lomilomi and shiatsu. Ironically, the statute precludes advertising that would be designed to educate the public to the legitimate, therapeutic uses of massage. Commercial speech, which serves individual and societal interests in assuring informed and reliable decisionmaking, is entitled to First Amendment protection. Virginia State Bd. of Pharmacy, 425 U.S. at 763-65. ([top](#))

[T]he First Amendment mandates that speech restrictions be narrowly drawn. The regulatory technique may extend only as far as the interest it serves. The State cannot regulate speech that poses no danger to the asserted state interest, nor can it completely suppress information when narrower restrictions on expression would serve its interests as well.

Bloss, 64 Haw. at 160, 673 P.2d at 1126 (quoting Central Hudson, 447 U.S. at 565) (emphasis added). The legislative history of section 452-23(a) reflects the legislature's attempt to comply with constitutional parameters. H. Stand. Comm. Rep. No. 1080-90, Haw. H.J. 1262 (1990). However, we conclude that the statute fails to pass constitutional scrutiny.

With respect to section 452-23(a)(6), which prohibits reference to the physical qualities of the massage therapist, advertisements illustrating the appealing characteristics of people are not illegal, misleading, or untruthful. A challenged restriction must serve a substantial state interest in a "direct and effective way." Edenfield v. Fane, 507 U.S. at 773 (quoting Ward, 491 U.S. at 800). Prohibiting the common practice of having attractive persons in advertisements fails to directly advance the State's interest, is far broader than necessary, and thus fails to satisfy the third and fourth parts of the Central Hudson test. ([top](#))

Lastly, section 452-23(a)(4), which bans depictions of the human form other than hands, wrists, and forearms, would not allow an illustration of shoulders, the neck, or feet being massaged. Yet a picture of hands using various sexual apparatus would not violate section 452-23(a)(4). The need for a complete prohibition against any use of pictures depicting the human form other than hands, wrists, and forearms is undermined by the fact that this very ban still allows the type of advertisements the legislature sought to avoid. The restrictions of section 452-23(a)(4), (5), and (6) are broader than reasonably necessary to prevent the perceived evil.⁽¹³⁾ Furthermore, the

mere fact that the speech in question may be unprofessional, suggestive, or even offensive to some persons does not justify broad, prophylactic restrictions.⁽¹⁴⁾ ([top](#))

Although a state may prohibit misleading advertising entirely, it may not place an absolute prohibition on potentially misleading information if the information may also be presented in a way that is not deceptive. Each state may decide for itself, within First Amendment constraints, how best to prevent such claims from being misleading. Peel, 496 U.S. at 111. If the "protections afforded commercial speech are to retain their force," we cannot simply rely upon the legislature's rote recitation of Central Hudson-type criteria in determining the constitutionality of the statute.⁽¹⁵⁾ Ibanez, 512 U.S. at 146. Rather, the legislature must carry its heavy burden of "distinguishing the truthful from the false, the harmful from the misleading, and the harmless from the harmful." Ibanez, 512 U.S. at 143 (quoting Zauderer, 471 U.S. at 646). "Broad prophylactic rules in the area of free expression are suspect. Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms." Edenfield, 507 U.S. at 777 (quoting NAACP v. Button, 371 U.S. 415, 438 (1963)). ([top](#))

Conclusion

It is our opinion that paragraphs (4), (5), and (6) of section 452-23(a) are overly broad and infringe upon the commercial speech rights afforded by the First Amendment. These paragraphs concern lawful activity, and advertisements containing the prohibited components not always would be misleading. We also acknowledge that they attempt to implement the legislature's substantial interest in separating the legitimate profession of massage therapy from illegal activities such as prostitution. Nevertheless, paragraphs (4), (5), and (6) of section 452-23(a) do not directly advance that interest. ([top](#))

Very truly yours,
Shari J. Wong
Deputy Attorney General

APPROVED:
Margery S. Bronster
Attorney General

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¹ Unless otherwise indicated, all statutory references are to the Hawaii Revised Statutes. ([back to document](#)) ([top](#))

² Although section 452-1 mentions one type of massage (i.e., lomilomi, or Hawaiian massage) and thus may be said to "recognize" that type, licenses are not issued for different types of massage. Clarification of this paragraph is recommended when amending section 452-23(a). ([back to document](#))

³ The First Amendment to the United State Constitution provides in part that "Congress shall make no law . . . abridging the freedom of speech, or of the press." The Due Process Clause of the Fourteenth Amendment has been interpreted to make this prohibition applicable to state action. See Stromberg v. California, 283 U.S. 359, 368 (1931). ([back to document](#))

⁴ Previously, purely commercial advertising received no First Amendment protection. See Valentine v. Chrestensen, 316 U.S. 52, 54 (1942) (city ordinance banning distribution of handbill advertising submarine tour upheld). ([back to document](#)) ([top](#))

⁵ In *Virginia State Bd. of Pharmacy*, the Court held that the State may not completely suppress the dissemination of truthful information about an entirely lawful activity (the sale and pricing of prescription drugs) merely because it is fearful of that information's effect upon the public. 425 U.S. at 776. However, as compared to "pure," non-commercial speech, commercial speech is afforded a lesser degree of First Amendment protection. ([back to document](#))

⁶ The Hawaii Supreme Court followed the *Central Hudson* decision, holding that a city ordinance that banned the posting of commercial handbills violated the First Amendment. Although the government's interest in maintaining the attractiveness of Waikiki for tourism was substantial, the regulation was more extensive than necessary to serve that interest. *State v. Bloss*, 64 Haw. 148, 637 P.2d 1117 (1981). See also *State v. Hawkins*, 64 Haw. 499, 643 P.2d 1058 (1982) (ordinance prohibiting in-person solicitation cannot be saved from constitutional attack because the handbill was not deceptive, false, or misleading, and the State did not show that a more limited regulation could not adequately protect the asserted government interest). ([back to document](#)) ([top](#))

⁷ Before *Central Hudson*, case law established that regulation of commercial speech is permitted where the advertising is inherently likely to deceive or where the record indicates that a particular form or method of advertising has in fact been deceptive. *Bates*, 433 U.S. at 383-84. See also *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 477, 462 (1978) (the prevention of "fraud, undue influence, intimidation, overreaching, and other forms of 'vexatious conduct'" is a legitimate state interest to support the ban of direct solicitation by attorneys); *Friedman v. Rogers*, 440 U.S. 1, 12-15 (because of a considerable history of deception and abuse of optometrical trade names, the prohibition of trade name usage was upheld). Post *Central Hudson*, the Court still considered whether the speech was misleading but expanded its review to include the three other parts of the *Central Hudson* test. In *re R.M.J.*, 455 U.S. at 206-07. ([back to document](#))

⁸ "It is well established that '[t]he party seeking to uphold a restriction on commercial speech carries the burden of justifying it.'" *Edenfield v. Fane*, 507 U.S. 761, 770 (1993) (quoting *Bolger v. Young Drug Products Corp.*, 463 U.S. 60, 71, n.20 (1983)). ([back to document](#))

⁹ When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, "the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds." *Marks v. United States*, 430 U.S. 188 (1977). In *44 Liquormart*, eight justices concluded that keeping legal users of alcoholic beverages ignorant of prices through a blanket ban on price advertising does not further any legitimate end. *44 Liquormart*, 517 U.S. at ____, 116 S. Ct. at 1509-10, 1518, 1521-22. ([back to document](#)) ([top](#))

¹⁰ It is interesting to note that the restrictions on advertising contained in section 452-23(a) apply not only to those who hold massage therapist licenses but to any person. ([back to document](#))

¹¹ With respect to section 452-23(a)(4)'s ban on depictions of the human form other than hands, wrists, and forearms, the use of pictures in advertisements serves important communicative functions, as recognized by the Court in *Zauderer*.

[I]t attracts the attention of the audience to the advertiser's message, and it may also serve to impart information directly. Thus, commercial illustrations are entitled to the First Amendment protections . . . restrictions on the use of visual media of expression in advertising must survive scrutiny under the *Central Hudson* test.

Zauderer, 471 U.S. at 647. ([back to document](#)) ([top](#))

¹² Section 452-23(a)(2) concerning escort and dating services initially appeared constitutionally suspect. However, if experience proves that certain forms of advertising are in fact misleading, although they did not appear at first to be "inherently" misleading, such experience may be taken into account. In re R.M.J., 455 U.S. at 200 n.11. The State may prohibit commercial advertising of matters which are illegal (e.g., prostitution), or advertising which is untruthful, misleading or deceptive. *Pittsburgh Press Co. v. Pittsburgh* Comm'n on Human Relations, 413 U.S. 376 (1973) (ordinance that prohibited advertising system designating help wanted ads by sex was narrowly drafted and constitutional in forbidding illegal discriminatory practice). Thus, considering the history of massage advertisements in conjunction with escort or dating services as implicit solicitations to prostitution, we believe section 452-23(a)(2) passes constitutional scrutiny. ([back to document](#)) ([top](#))

¹³ The difficulty with an overly broad regulation is not insignificant. An overly broad statute risks a chilling effect upon protected speech. First Amendment interests are fragile and a person considering certain activity "might choose not to speak because of uncertainty whether his claim of privilege would prevail if challenged. . . . [T]he possible harm to society from allowing unprotected speech to go unpunished is outweighed by the possibility that protected speech will be muted." *Bates*, 433 U.S. at 380. ([back to document](#)) ([top](#))

¹⁴ In striking down a state prohibition of contraceptive advertisements, the Court stated that offensiveness and embarrassment were "classically not justifications validating the suppression of expression protected by the First Amendment. At least where obscenity is not involved, we have consistently held that the fact that protected speech may be offensive to some does not justify its suppression." *Carey v. Population Services International*, 431 U.S. 678, 701 (1977). The First Amendment "does not permit the government to prohibit speech as intrusive unless the 'captive' audience cannot avoid the objectionable speech." *Consolidated Edison Co. v. Public Serv. Comm'n*, 447 U.S. 530, 542 (1980). ([back to document](#)) ([top](#))

¹⁵ It is significant to note that the Court rejected the *Posadas* application of *Central Hudson*, holding that *Posadas* erred in concluding that it was "up to the legislature" to choose suppression over a less restrictive speech policy. *44 Liquormart*, 517 U.S. at ____, 116 S. Ct. at 1511. The Court declined to give force to the highly deferential approach of *Posadas* and concluded that "a state legislature does not have the broad discretion to suppress truthful, nonmisleading information for paternalistic purposes that the *Posadas* majority was willing to tolerate." *Id.* ([back to document](#))

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46-063 Emepela Pl. #U101 Kaneohe, HI 96744 · (808) 679-7454 · Kris Coffield · Co-founder/Legislative Director

TESTIMONY FOR SENATE BILL 2376, RELATING TO ADVERTISING

Senate Committee on Commerce and Consumer Protection

Hon. Rosalyn H. Baker, Chair

Hon. Brian T. Taniguchi, Vice Chair

Tuesday, February 4, 2014, 9:00 AM

State Capitol, Conference Room 229

Honorable Chair Baker and committee members:

I am Kris Coffield, representing IMU Alliance, a nonpartisan political advocacy organization that currently boasts over 175 local members. On behalf of our members, we offer this testimony in support of, with proposed amendments for Senate Bill 2376, relating to advertising.

In the Information Age, the Internet has become the predominant vehicle for advertising black market services, including sex-trafficking (examples below). Every day, approximately 300 ads publicizing Hawaii-based prostitution are posted on websites such as Backpage.com and Eros-Hawaii.com, totaling approximately 110,000 ads per year. Internet ads for prostitution usually appear under the guise of escort or massage services, and are posted in listings with headings "massage," "relaxation," "spa," "escort services," or "body rubs." Prostitution is rarely explicitly mentioned in sex-trafficking ads, which instead make their criminal intent clear through the use of sexually erotic photos and suggestive language.

This bill prohibits advertisements using, or appearing in directories that use, the words massage, relaxation, spa, escort, or body rubs from verbally or pictographically depicting the personal physical qualities of anyone being advertised as a massage therapist or relaxation therapist, aside from photos of the hands, wrists, and forearms. For example, under the proposal, a person could not include pictures or descriptions of practitioners in ads containing the word "spa" or "relaxation." Precedent for this bill already exists in state law under §452-23, which restricts the potential advertising methods of massage parlors. Unfortunately, §452-23 applies only to massage parlors and does not include online advertising, omitting

many high-risk sex-trafficking establishments, of which IMUAlliance, along with Pacific Alliance to Stop Slavery, estimate there to be approximately 125 in Hawaii.

This proposal also finds middle ground between giving publishers, like Backpage, a *carte blanche* rebuttable presumption and forcing publishers to augment their policies specifically for our state. Under this measure, publishers are entitled to a rebuttable presumption of compliance if they obtain an "agreement" that advertisers will not advertise services in violation of state or federal law, something that is contained in virtually all advertising sites' terms of use. Forcing sites to abide by a more proscriptive law would likely be overturned by the courts. In *Backpage and Internet Archive v. McKenna* (2012), a U.S. District Court held that such laws violate U.S.C. 230, which says that websites aren't liable for third party content except in three specific situations: intellectual property, communications privacy, and federal criminal prosecutions. The Court also held that such laws probably violate the First Amendment by imposing a content pre-screening obligation on online publishers that may cause too much self-censorship and questioned why state legislatures couldn't pursue the less restrictive statutory option of holding the advertisers, rather than third party publishers, culpable. Targeting third-party perpetrators is exactly what this bill does, meaning this proposal isn't likely to be legally challenged.

That said, we encourage the committee to amend this bill by adding escorts to the list of entities prohibited from advertising using physical depictions. This can be accomplished by:

- ^ revising page 1, lines 11 and 12 to read: "...of a person being advertised as a massage therapist, relaxation therapist, or escort; or";
- ^ revising page 1, lines 14 and 15 to read: "being advertised as a massage therapist, relaxation therapist, or escort in any...";
- ^ revising page 2, line 5 to read: "relaxation therapy, relaxation therapy establishment, escort, or escort service,";
- ^ revising page 2, lines 11 and 12 to read: "...relaxation therapist, relaxation therapy establishment, escort, or escort service will not advertise...,";
- ^ adding a definition of "escort" to the bill to read: "Escort" means any person who engages in the occupation or practice of escort service for compensation,"; and

- ^ adding a definition of “escort service” to the bill to read: **“Escort service” means providing or offering to provide company to other persons for amusement or entertainment at any public or private location.**

Mahalo for the opportunity to testify in support of this bill.

Sincerely,
Kris Coffield
Legislative Director



February 3, 2014

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair
Senator Clarence K. Nishihara
Senator Glenn Wakai
Senator Sam Slom

NOTICE OF HEARING

DATE: Tuesday, February 4, 2013
TIME: 9:00 am
PLACE: Conference Room 229
State Capitol
415 South Beretania Street

RE: TESTIMONY IN SUPPORT OF SB2376
RELATING TO ADVERTISING

Prohibits advertisements for massage, relaxation, spa, escort, or body rubs from including certain types of pictures and from referring to personal physical qualities of a person other than the hands, wrists, and forearms.

Dear Committee on Commerce and Consumer Protection:

The Pacific Alliance to Stop Slavery (PASS) supports **SB2376**. We seek to establish the online advertising of women and children for sex as a criminal offense. According to our legal research, it is already illegal to advertise photos of body parts other than the hands, wrists, and forearms with regard to ads for massage therapy establishments, however this offense only relates to print advertisements.

This bill will establish the same offense applied to online advertisements, which is the promotion vehicle of choice for sex traffickers. In 2011, Hawaii's Attorney General was one of 48 Attorney Generals across the nation who signed a letter to BackPage.com to urge the online advertising agency to stop selling women and children for sex online.

In that same vein, we must act locally to prohibit this offense by targeting the producers of these ads. I kindly urge you to pass **SB2376**.

Thank you for hearing this much needed legislation.

Sincerely,

Kathryn Xian
Executive Director
Pacific Alliance to Stop Slavery

Encl: National Association of Attorney Generals Letter to BackPage.com



National Association
of Attorneys General

PRESIDENT

Rob McKenna
Washington Attorney General

PRESIDENT-ELECT

Doug Gansler
Maryland Attorney General

VICE PRESIDENT

J.B. Van Hollen
Wisconsin Attorney General

IMMEDIATE PAST PRESIDENT

Roy Cooper
North Carolina Attorney General

EXECUTIVE DIRECTOR

James McPherson

August 31, 2011

Mr. Samuel Fifer
Counsel for Backpage.Com, LLC
SNR Denton US
233 South Wacker Drive
Suite 7800
Chicago, IL 60606-6306

**Re: Backpage.com's ongoing failure to effectively limit
prostitution and sexual trafficking activity on its website**

Mr. Fifer:

This letter is in response to Backpage.com's assurances, both public and in private, concerning the company's facilitation of the sexual exploitation of children, and prostitution. As our state's chief law enforcement officers, we are increasingly concerned about human trafficking, especially the trafficking of minors. Backpage.com is a hub for such activity.

While Backpage.com professes to have undertaken efforts to limit advertisements for prostitution on its website, particularly those soliciting sex with children, such efforts have proven ineffective. In May, for example, a Dorchester, Massachusetts man was charged for forcing a 15-year-old girl into a motel to have sex with various men for \$100 to \$150 an hour. To find customers, the man posted a photo of the girl on Backpage.com. He was later found with \$19,000 in cash. In another example, prosecutors in Washington state are handling a case in which teen girls say they were coerced, threatened and extorted by two adults who marketed them on Backpage.com.

We have tracked more than 50 instances, in 22 states over three years, of charges filed against those trafficking or attempting to traffic minors on Backpage.com. These are only the stories that made it into the news; many more instances likely exist. These cases often involve runaways ensnared by adults seeking to make money by sexually exploiting them. In some cases, minors are pictured in advertisements. In others, adults are pictured but minors are substituted at the "point of sale" in a grossly illegal transaction.

Nearly naked persons in provocative positions are pictured in nearly every adult services advertisement on Backpage.com and the site requires advertisements for escorts, and other similar "services," to include hourly rates. It does not require forensic training to understand that these advertisements are for prostitution. This hub for illegal services has proven particularly enticing for those seeking to sexually exploit minors.

2030 M Street, NW
Eighth Floor
Washington, DC 20036
Phone: (202) 326-6000
<http://www.naag.org/>

In a meeting with the Washington State Attorney General's Office, Backpage.com vice president Carl Ferrer acknowledged that the company identifies more than 400 "adult services" posts every month that may involve minors. This figure indicates the extent to which the trafficking of minors occurs on the site – the actual number of minors exploited through Backpage.com may be far greater. The company's figures, along with real world experience, demonstrate the extreme difficulty of excising a particularly egregious crime – the sexual exploitation of minors – on a site seemingly dedicated to the promotion of prostitution.

On a regional basis, there has been no change in postings for prostitution services on Backpage.com. For example, between July 28 and August 1, the Missouri Attorney General's Office on behalf of the Attorneys General Working Group conducted a review of adult content on Backpage.com. This review revealed numerous daily postings for "escort" services in the Adult>Escorts section. On Sunday, July 31, in the St. Louis-area alone, there were one hundred and three (103) new postings for such services. Other regional examples include:

- On August 1, the Washington State Attorney General's Office found one hundred and forty two (142) advertisements that are obviously for prostitutes in the Seattle area; and
- On August 2, even the Connecticut State Attorney General's Office found advertisements for prostitutes in the Connecticut area on the Springfield, Massachusetts and Rhode Island pages, circumventing Backpage.com's omission of a Connecticut adult section.

Missouri investigators further confirmed that Backpage.com's review procedures are ineffective in policing illegal activity. On July 28 and July 29, investigators flagged twenty five (25) new postings advertising prostitution in the St. Louis, Kansas City, Springfield, Columbia, and Jefferson City areas. By August 1, at least four days later, only five of these postings, or less than a quarter, had been removed.

The prominence of illegal content on Backpage.com conflicts with the company's representations about its content policies. Backpage.com claims that it "is committed to preventing those who are intent on misusing the site for illegal purposes."¹ To that end, Backpage.com represents that it has "implemented strict content policies to prevent illegal activity," and that the company has "inappropriate ad content removed."² Backpage.com also requires those who post "adult services" advertisements to click a link indicating they agree not to "post any solicitation directly or in 'coded' fashion for any illegal service exchanging sexual favors for money or other valuable consideration."³ However, a cursory look at a relevant section demonstrates that this guideline is not enforced.⁴

In fact, in a meeting with the Washington State Attorney General's Office, Village Voice Media Board Member Don Moon readily admitted that prostitution advertisements regularly appear on Backpage.com. This shows that the stated representations about the site are in direct

¹ Backpage.com, Safety and Security Enhancements, <http://blog.backpage.com/> (last visited August 05, 2011).

² *Id.*

³ See Backpage.com, Posting Rules, <http://posting.seattle.backpage.com/gyrobase/classifieds/PostAdPPI.html/sea/posting.seattle.backpage.com/?section=4381&category=4443&u=sea&serverName=posting.seattle.backpage.com&superRegion=Seattle> (last visited August 05, 2011)..

⁴ See Backpage.com, Seattle Escorts, <http://seattle.backpage.com/FemaleEscorts/> (last visited August 05, 2011).

conflict with the reality of Backpage's business model: making money from a service illegal in every state, but for a few counties in Nevada.

Based on an independent assessment by the AIM Group, Backpage.com's estimated annual revenue from its adult services section is approximately \$22.7 million. This figure, along with information you provided to the Working Group, indicates that Backpage.com devotes only a fraction of the revenue generated from its adult section advertisements to manual content review. We believe Backpage.com sets a minimal bar for content review in an effort to temper public condemnation, while ensuring that the revenue spigot provided by prostitution advertising remains intact. Though you have stated "all new ads are moderated by a staff member,"⁵ there appear to be no changes in the volume of prostitution advertisements resulting from this "moderation."

As a practical matter, it is likely very difficult to accurately detect underage human trafficking on Backpage.com's adult services section, when to an outside observer, the website's sole purpose seems to be to advertise prostitution. That is why Craigslist's decision to shut down its adult services section was applauded as a clear way for it to eradicate advertising on its website that trafficked children for prostitution. It is also why we have called on Backpage.com to take similar action.

Furthermore, in lieu of a subpoena, the Working Group asks that Backpage.com provide additional information so that we may better understand the company's policies and practices. As noted earlier, Backpage.com represents that it has "strict content policies to prevent illegal activity."⁶ We ask that Backpage.com substantiate this claim by:

1. Describing in detail Backpage.com's understanding of what precisely constitutes "illegal activity," including whether Backpage.com contends that advertisements for prostitution services do not constitute advertisements for "illegal activity;"
2. Providing a copy of such policies, including but not limited to the specific criteria used to determine whether an advertisement may involve illegal activity;
3. Providing the list of the prohibited terms for which Backpage.com is screening;
4. Describing in detail the individualized or hand review process undertaken by Backpage.com, including the number of personnel currently assigned to conduct such review;
5. Stating the number of advertisements in its adult section, including all subsections, submitted since September 1, 2010;
6. Stating the number of advertisements, in its adult section, including all subsections, submitted since September 1, 2010, which were subjected to individualized or hand review prior to publication; and
7. Stating the number of advertisements in its adult section, including all subsections, submitted since September 1, 2010, rejected *prior to* publication because they involved or were suspected to involve illegal activity.

⁵ Letter from Samuel Fifer, Attorney, SNR Denton, to Attorneys General Working Group (Jan. 27, 2011).

⁶ Backpage.com, *supra* note 1.

Backpage.com's further represents that it has "inappropriate ad content removed."⁷ We ask that Backpage.com substantiate this claim by:

8. Describing the criteria used to determine whether a published advertisement should be removed due to actual or suspected illegal activity;
9. Providing a copy of such policies that detail the criteria used to determine whether a published advertisement should be removed due to actual or suspected illegal activity;
10. Describing in detail the criteria Backpage.com uses, including but not limited to the number of user reports required, before a published advertisement is subjected to further review;
11. Providing a copy of such policies that detail the criteria Backpage.com uses, including but not limited to the number of user reports required, before a published advertisement is subjected to further review;
12. Stating the number of published advertisements posted since September 1, 2010 in its adult section, including all subsections, that Backpage.com has subjected to post publication review;
13. Stating the number of published advertisements posted since September 1, 2010 in its adult section, including all subsections, that Backpage.com removed following post publication review;
14. Stating the number of published advertisements posted since September 1, 2010 in its adult section, including all subsections, that Backpage.com *did not* remove following post publication review;
15. Stating the number of published advertisements posted since September 1, 2010 that were not subjected to further review by Backpage.com despite the receipt of user reports.

Lastly, Backpage.com also represents that it is "partnering with law enforcement and safety advocates/experts."⁸ We request that Backpage.com support this assertion by:

16. Identifying the specific "law enforcement [agencies] and safety advocates/experts" with whom Backpage.com has partnered and describing the actions taken by Backpage.com in connection with such partnerships;
17. Stating the number of advertisements submitted since September 1, 2010 that Backpage.com has reported pre-publication to local, state or federal law enforcement agencies, or to the National Center for Missing and Exploited Children's Cyber Tipline, because of actual or suspected illegal activity;
18. Stating the number of user reports of suspected exploitation of minors and/or human trafficking Backpage.com requires before subjecting a published advertisement to further review;
19. Stating the number of published advertisements posted since September 1, 2010 that Backpage.com removed in response to such user reports;
20. Stating the number of published advertisements posted since September 1, 2010 that Backpage.com reported to local, state or federal law enforcement agencies, or to the National Center for Missing and Exploited Children's Cyber Tipline, as a result of such reports; and

⁷ Backpage.com, *supra* note 1.

⁸ Backpage.com, *supra* note 1.

21. Stating the number of published advertisements posted since September 1, 2010 that Backpage.com *did not* remove following a review prompted by user reports.

The National Association of Attorneys General requests Backpage.com's response on or before September 14, 2011.

Respectfully,



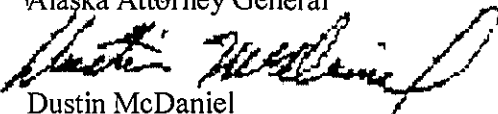
George Jepsen
Attorney General of Connecticut



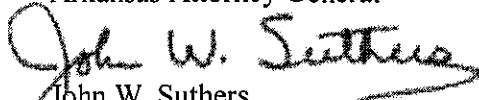
Rob McKenna
Attorney General of Washington



John J. Burns
Alaska Attorney General



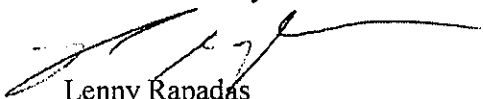
Dustin McDaniel
Arkansas Attorney General



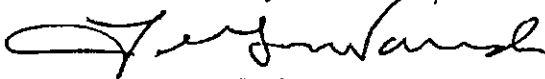
John W. Suthers
Colorado Attorney General



Pam Bondi
Florida Attorney General



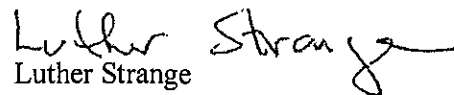
Lenny Rapadas
Guam Attorney General



Lawrence Wasden
Idaho Attorney General




Chris Koster
Attorney General of Missouri



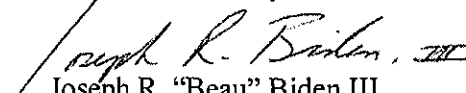
Luther Strange
Alabama Attorney General



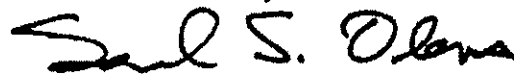
Tom Horne
Arizona Attorney General



Kamala Harris
California Attorney General



Joseph R. "Beau" Biden III
Delaware Attorney General



Sam Olens
Georgia Attorney General



David Louie
Hawaii Attorney General



Lisa Madigan
Illinois Attorney General



Greg Zoeller
Indiana Attorney General



Derek Schmidt
Kansas Attorney General



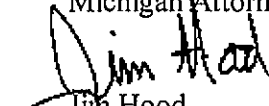
James "Buddy" Caldwell
Louisiana Attorney General



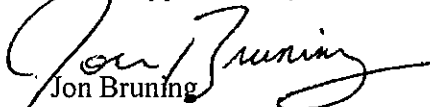
Douglas F. Gansler
Maryland Attorney General



Bill Schuette
Michigan Attorney General



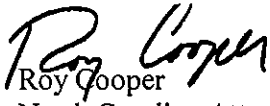
Jim Hood
Mississippi Attorney General



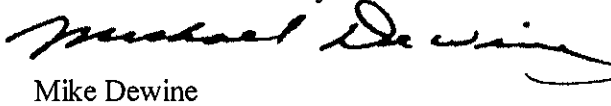
Jon Bruning
Nebraska Attorney General



Michael Delaney
New Hampshire Attorney General



Roy Cooper
North Carolina Attorney General



Mike Dewine
Ohio Attorney General



John Kroger
Oregon Attorney General



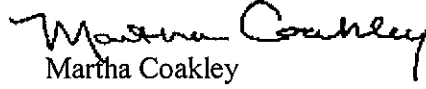
Tom Miller
Iowa Attorney General



Jack Conway
Kentucky Attorney General



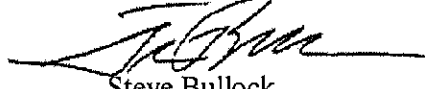
William J. Schneider
Maine Attorney General



Martha Coakley
Massachusetts Attorney General



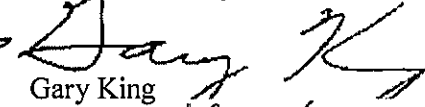
Lori Swanson
Minnesota Attorney General



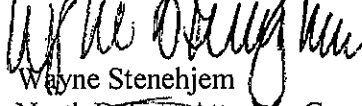
Steve Bullock
Montana Attorney General



Catherine Cortez Masto
Nevada Attorney General



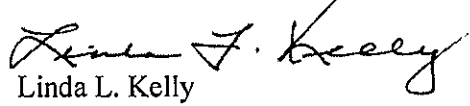
Gary King
New Mexico Attorney General



Wayne Stenehjem
North Dakota Attorney General



Scott Pruitt
Oklahoma Attorney General



Linda L. Kelly
Pennsylvania Attorney General

Peter F. Kilmartin
Peter Kilmartin
Rhode Island Attorney General

Marty J. Jackley
Marty J. Jackley
South Dakota Attorney General

Greg Abbott
Greg Abbott
Texas Attorney General

Kenneth T. Cuccinelli, II
Kenneth T. Cuccinelli, II
Virginia Attorney General

Alan Wilson
Alan Wilson
South Carolina Attorney General

Robert E. Cooper, JR.
Robert E. Cooper, JR.
Tennessee Attorney General

Mark Shurtleff
Mark Shurtleff
Utah Attorney General

Gregory A. Phillips
Greg Phillips
Wyoming Attorney General



THE WAYNE FOUNDATION, INC.

January 30, 2014

RE: Urging the Legislature of the State of Hawaii to Immediately Address Senate Bill No. 2376

Dear Representatives,

We are writing you today in support of the passage of Senate Bill number 2376, an act that directly addresses the issue of Cyber Trafficking.

The crime of human trafficking is an epidemic occurring in all 50 states. Anyone can become a victim of human trafficking no matter their age, ethnicity, or sex. SB2376 addresses the issue of online advertising for massage. It would prohibit advertisements for massage, relaxation, spa, escort, or body rubs from including certain types of pictures and from referring to personal physical qualities of a person other than the hands, wrists, and forearms.

We, the undersigned, are the founders of The Wayne Foundation, a 501(c)(3) non-profit corporation. Our mission is to spread awareness of the commercial sexual exploitation of children and domestic minor sexual trafficking occurring within the United States. We believe that Hawaii Senate Bill 2376 has the potential to help prevent children from being sold online for sexual purposes under the guise of a legitimate, adult operated businesses.

The Wayne Foundation's President Jamie Walton is a survivor of sexual trafficking in the United States. At the age of fourteen she was advertised online for the purposes of commercial sex. These advertisements commonly use code words, and images to express their true intentions. Sixteen years ago Mrs. Walton faced the horror of abuse and manipulation, but even still the epidemic of domestic minor sexual trafficking continues to prevail on the internet. As a survivor she gives her full support to SB 2376. Mrs Walton would gladly give her testimony before the judiciary committee in person if requested.

Sincerely,

Jamie L. Walton – President
291 Donovan Rd.
Englewood, FL 34223

Kevin P. Smith – Vice President
10 MECHANIC ST STE 220
Red Bank, NJ 07701

SB2376

Submitted on: 1/27/2014

Testimony for CPN on Feb 4, 2014 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Candice Garrison	Courage Worldwide Hawaii	Support	No

Comments: We as an organization and me personally as an individual will do everything in our power to make sure our local girls are not sexually exploited. These kinds of advertisements will limit the amount shown thus decreasing the amount of trafficking that can be explicitly advertised for and thus decreasing the the amount of girls trafficked. Please Pass this law! Thank you for your kind consideration as we are fighting everyday to help stop this awful crime.

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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SB2376

Submitted on: 1/27/2014

Testimony for CPN on Feb 4, 2014 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Jessica Munoz	Individual	Support	No

Comments: I support the bill in regards to Internet Advertising- which Prohibits advertisements for massage, relaxation, spa, escort, or body rubs from including certain types of pictures and from referring to personal physical qualities of a person other than the hands, wrists, and forearms. This is a vital step in beginning to protect our children that are being exploited on line in this manner.

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.

SB2376

Submitted on: 2/3/2014

Testimony for CPN on Feb 4, 2014 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Geneva Graef	Individual	Support	No

Comments: As a young female student in the state of Hawaii, I can't believe that this is not already established in the state of Hawaii. I have always been told to be cautious of online predators and safety issues when it comes to the internet, but to find out that there are few to no laws to protect me if something were to go wrong, is abhorrent to me.

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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SB2376

Submitted on: 1/29/2014

Testimony for CPN on Feb 4, 2014 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
leslie drechsler	Individual	Support	No

Comments: Women and underage girls in Hawaii advertised and purchased in massage parlors to generate business for sex traffickers. I support SB 2376 Relating to Advertising because it prohibits unnecessary and leading advertisements for these types of "spa" related services.

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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SB2376

Submitted on: 1/29/2014

Testimony for CPN on Feb 4, 2014 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Misha kassel	Individual	Support	No

Comments: Working in emergency department I unfortunately see victims of sex trafficking and as a society we need to take measure sto help end this exploitation of the women of our islands.

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SB2376

Submitted on: 1/29/2014

Testimony for CPN on Feb 4, 2014 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Vicki Rosenthal	Individual	Support	No

Comments: I support efforts to reduce cyber trafficking to end human trafficking and prosecute the perpetrators. Victims of labor and sex trafficking are found in these massage-type businesses and are forced / threatened / coerced to perform sexual acts. This law should provide harsher penalties and forensic means to stop human trafficking establishments. Other words of indecent advertising: "Table showers".

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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SB2376

Submitted on: 1/27/2014

Testimony for CPN on Feb 4, 2014 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Denny Watts	Individual	Support	No

Comments: Please be advised that we are in support of SB2376. We believe that the current advertising that is allowed is simply a cover for solicitation, both for prostitution and the exploitation of women.

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

SB2376

Submitted on: 2/3/2014

Testimony for CPN on Feb 4, 2014 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Emilie Harrell	Individual	Support	No

Comments: It is important as legislators to ensure the safety and working conditions of all people. Anything to do with Human Trafficking and illegal massages do not promote nor ensure the safety of human beings.

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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SB2376

Submitted on: 2/1/2014

Testimony for CPN on Feb 4, 2014 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Maureen King	Individual	Support	No

I support SB2376 Relating to Advertising. Thank you.

SB2376

Submitted on: 2/3/2014

Testimony for CPN on Feb 4, 2014 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Tamara Bitanga	Individual	Support	No

Comments: I strongly support SB 2376 thank you!

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SB2376

Submitted on: 2/2/2014

Testimony for CPN on Feb 4, 2014 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Kelley Lum Oshiro	Individual	Support	No

Comments:

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SB2376

Submitted on: 2/1/2014

Testimony for CPN on Feb 4, 2014 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Noel Gibeau	Individual	Support	No

Comments:

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SB2376

Submitted on: 2/3/2014

Testimony for CPN on Feb 4, 2014 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Amy Yagi	Individual	Support	No

Comments:

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SB2376

Submitted on: 2/3/2014

Testimony for CPN on Feb 4, 2014 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Leslie D. Cabingabang	Individual	Support	No

Comments:

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SB2376

Submitted on: 2/3/2014

Testimony for CPN on Feb 4, 2014 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Joanna Wright	Individual	Support	No

Comments: Please support this measure because it will help curb sex trafficking, the most horrific form of oppression present in our state today.

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