



The Judiciary, State of Hawai'i

Testimony to the House Committee on Judiciary

Representative Karl Rhoads, Chair

Representative Joy A. San Buenaventura, Vice Chair

Tuesday, February 3, 2015, 2:00 PM

State Capitol, Conference Room 325

by

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Bill No. and Title: House Bill No. 288, Relating to Unlawful Internet Posting of Personal Information.

Purpose: Regulates internet posting of sitting, full-time justices' or judges' home addresses and personal telephone and cellular phone numbers.

Judiciary's Position:

This bill creates a statutory restriction for internet posting of the home address and telephone and cellular telephone numbers of sitting, full-time justices and judges and the spouses and children who live with them. It also creates relief in the form of criminal sanctions, injunctive or declarative relief, and award of court costs and attorney's fees.

The Hawaii State Judiciary supports this legislation. Comparable legislation to this bill was enacted in California many years ago and has proven effective in protecting government officials from harassment and retaliation based on their occupation. The California statute (California Government Code Section 6254.21) is far more comprehensive than the present bill as it encompasses judges within its ambit of "all appointed and elected officers." The draft legislation for Hawaii judges and judges was provided to various government offices because this bill could be expanded in the manner that the California legislation has been -- i.e., to include protection to "any elected or appointed official."



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At this time, the bill is drafted to protect the internet dissemination of certain personally identifiable information about our justices and judges. Why do justices and judges merit this protection? In a recent law review article about the "dark side of judging," the author explains that "one of the most pressing issues facing federal judges in 2013 is judicial security and safety" and that "[m]any federal judges are living in an environment of fear due to their jobs." (Comment, "Suffering in Silence-The Dark Side of Judging," 63 Syracuse L. Rev. 253 (2013).) The article details both what current judges and their families endure when a litigant becomes angry and the environment of fear that judges face knowing their private information is public. The author notes that personally identifiable information on the internet is a substantial risk to the personal security and physical safety of judges because the risk of identity theft following disclosure will be substantially heightened. These threats may alter judges' confidence in their well-being and the safety of their families. *Id.* at 271.

In enacting the California statute that serves as a model for this bill, an advisory task force wrote to the Legislature that one of the situations it considered was a case involving a felon who obtained the home address information of a judge, prosecutor, public defender and law enforcement officials who were involved in his previous trial. The defendant obtained the home address information of these officials from an information data vendor that provided financial and public record information. He staked out the judge's home while developing a plan to assassinate the judge. He solicited another ex-convict to help him kill the judge. Before he could carry out the plan, however, he was arrested for sexually assaulting a woman and murdering a witness to that crime. (pg. 4, Advisory Task Force Report to California Legislature on the Public Safety Officials' Home Protection Act).

On a daily basis, Hawaii justices and judges issue decisions that have serious implications for party's personal liberty, finances, familial relationships, and business dealings. This places them at risk for intimidation from parties trying to influence the outcome of a case or for retaliation from disgruntled litigants. As an example, in an Hawaii District Court case, the defendant mentioned in his pleadings that the presiding judge raised two daughters. The children had no relevance to the case and the defendant's reference to them in the pleadings served no purpose other than to attempt to intimidate the judge by putting the judge on notice that he had access to information about the judge's personal life.

The California Public Officials' Home Protection Act has proved helpful to the officials it protects. Unfortunately, it is time for Hawaii to embrace similar protections. While it is clear that no privacy protection legislation will be perfect and that absolute security can never be obtained, reasonable cost-effective steps can and should be taken to minimize the greatest risks.

Thank you for the opportunity to testify on this matter.



LATE

Hearing Date/Time: Committee on Judiciary
Tuesday, February 3, 2015, 2:00 p.m.
Place: Conference Room 325
Re: Testimony of the ACLU of Hawaii **in Opposition to H.B. 288**, Relating to
Unlawful Internet Posting of Personal Information

Dear Chair Rhoads and Members of the Committee on Judiciary,

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in **opposition to H.B. 288**, Relating to Unlawful Internet Posting of Personal Information.

Simply put, H.B. 288 is facially unconstitutional. It violates the First Amendment to the United States Constitution, and article I, section 4 of the Hawai‘i Constitution, as a content-based prohibition on protected free speech.

A federal district court summarily dispatched a nearly identical statute in Washington State, basing its ruling on well-worn Supreme Court precedent. In *Sheehan v. Gregoire*, 272 F. Supp. 2d 1135, 1142 (W.D. Wash. 2003), the court struck down a Washington statute that prohibited the disclosure of personal information of any court employee or law enforcement official, even if the individual disclosing the information had a subjective intent to harm the individual whose information was released; the court found “no authority for the proposition that truthful lawfully-obtained, publicly-available personal identifying information constitutes a mode of constitutionally proscribable speech. Rather, disclosing and publishing information obtained elsewhere is precisely the kind of speech that the First Amendment protects. *Bartnicki v. Vopper*, 532 U.S. 514, 527, 121 S.Ct. 1753, 149 L.Ed.2d 787 (2001).”

While the ACLU appreciates the intent of this measure – and while the Legislature can (and has) prohibited “true threats” (which are not protected by the First Amendment), the proposed restrictions on free speech in H.B. 288 are unlawful. We respectfully request that the Committee defer this bill.

Thank you for this opportunity to testify.

Daniel M. Gluck
Legal Director
ACLU of Hawaii

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for 50 years.

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COMMITTEE ON JUDICIARY

Tuesday, February 3, 2015, 2:00 p.m., Room 325
HB 288 RELATING TO UNLAWFUL INTERNET POSTING OF PERSONAL INFORMATION
League of Women Voters of Hawaii

Chair Rhoads, Vice Chair San Buenaventura and Committee Members:

The League of Women Voters of Hawaii SUPPORTS HB 288.

HB 288 amends Chapter 487J of the Hawaii Revised Statutes to prohibit the unlawful internet posting of sitting full time justice's or judge's home address, or personal telephone or cellular phone number and extends the protection to a sitting full time justice or judge's spouse or child. It specifies that county and state agencies are subject to this prohibition.

The League supports the fundamental right to privacy, as enshrined in Hawaii's constitution, Article I Section 6, which recognizes the right of the people to privacy, a right that shall not be infringed without the showing of a compelling state interest.

We live in a world that is increasingly data-driven and data-sharing. Yet data sharing is not always benevolent or impartial. Judges perform an important civic function in our society, providing adjudication between disputants and among parties who are often under extreme emotional duress. Because of this special responsibility, judges can also become targets and victims of disputants unhappy with judicial outcomes. By protecting judges' personal information from unlawful dissemination on the internet, HB 288 comports with the constitutional requirement that the legislature take affirmative steps to implement the right to privacy.

For these reasons, The League of Women Voters urges you to support HB 288

Thank you for the opportunity to submit testimony on this important measure.