

SB130

RELATING TO STATEWIDE TRAFFIC CODE.

Repeals prohibition on displays of movable signs near public highways.



Senator Clarence Nishihara
Chair, Senate Committee on Transportation
415 South Beretania St., Room 204
Honolulu, HI 96813

January 22, 2015

Re: S.B. 130: Repeal of Hawai'i Revised Statutes § 291C-77(a) & (c)

Dear Senator Nishihara:

At the request of the American Civil Liberties Union of Hawai'i, Senator Keith-Agaran has introduced S.B. 130, Relating to Statewide Traffic Code. We assume that the bill will be referred to the Senate Committee on Transportation, and we respectfully request that the Committee hear the bill, amend it, and pass it out of Committee.

In short, we are asking that the Legislature repeal Hawai'i Revised Statutes ("HRS") § 291C-77(a) and -77(c).¹ S.B. 130 currently proposes the repeal of subsection (c) only, so we ask that the Transportation Committee amend the bill to propose repealing subsection (a) as well.

¹ HRS § 291C-77 provides:

§ 291C-77. Pedestrians soliciting rides, business or attention of motorist

- (a) Except as otherwise provided by county ordinance, no person shall stand in, walk along, or otherwise occupy a portion of a highway for the purpose of soliciting a ride, employment, business, or contributions from the occupant of any vehicle.
- (b) No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.
- (c) Except as otherwise provided by county ordinance, no person shall hold or display a movable sign within the right-of-way boundaries of a public highway or on the sidewalk abutting a public highway or in an area adjacent to the highway for the purpose of carrying on political campaign activities as defined in section 19-6(7) and which seek to draw the attention of occupants of motor vehicles using the highway. A movable sign is any portable device, display, emblem, billboard, notice, picture, painting or writing, other than official signs placed or required by the State or county.

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Section 291C-77(c) – the provision that is currently marked for repeal by S.B. 130 – was ruled unconstitutional in 1975² and has not been enforced since that time, such that its removal is merely a housekeeping matter.

Section 291C-77(a) contains language that is nearly identical to that struck down by the Ninth Circuit Court of Appeals (en banc) in 2011, such that its removal will avoid unnecessary future litigation. In *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936 (9th Cir. 2011) (en banc), *cert. denied*, 132 S.Ct. 1566 (2012), the Ninth Circuit held that a city ordinance – remarkably similar to HRS § 291C-77(a)³ – was facially unconstitutional. In reaching this conclusion, the Ninth Circuit reasoned that such laws restrict significantly more speech than necessary to achieve the city’s purported traffic safety goals, insofar as these laws apply to lemonade stands, volunteers fundraising for disaster relief, and school children shouting “carwash” at passing vehicles; the court held that there were alternative ways to address traffic concerns that did not impose the same unconstitutional burdens on speech.⁴

Again, we respectfully ask that the Transportation Committee hear S.B. 130, amend it to repeal subsection (a), and pass it out of Committee. Please let us know if you have any questions or concerns, and thank you for your attention to this matter.

Sincerely yours,

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² *Aiona v. Pai*, 516 F.2d 892 (9th Cir. 1975).

³ The Redondo Beach, California ordinance prohibited individuals from “stand[ing] on a street or highway and solicit[ing], or attempt[ing] to solicit, employment, business, or contributions from an occupant of any motor vehicle.” *Comite de Jornaleros*, 657 F.3d at 940 (citing Redondo Beach Municipal Code § 3–7.1601(a)). As set forth above, HRS § 291C-77(a) is nearly identical (if not broader), prohibiting individuals from “stand[ing] in, walk[ing] along, or otherwise occupy[ing] a portion of a highway for the purpose of soliciting a ride, employment, business, or contributions from the occupant of any vehicle.”

⁴ *Redondo Beach*, 657 F.3d at 948-950. *See, e.g.*, HRS §§ 291C-73(c) (forbidding jaywalking); 291C-76 (forbidding pedestrians from obstructing traffic); 291C-111 (allowing counties to restrict areas for stopping, standing, or parking of vehicles).