



LATE

Committee: Committee on Judiciary
Hearing Date/Time: Friday, March 18, 2016, 2:00 p.m.
Place: Conference Room 325
Re: Testimony of the ACLU of Hawaii in **Support** of S.B. 2439, S.D.1, Relating to Law Enforcement

Dear Chair Rhoads and Members of the Committee on Judiciary:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in support of S.B. 2439, S.D.1, making clear that individuals are generally entitled to photograph and/or videotape law enforcement officers so long as those individuals do not interfere with the officers’ actions.

The First Amendment protects an individual’s right to photograph and film anything that is plainly visible from a public space. Unfortunately, law enforcement officers in Hawaii have been known to order people to stop taking photographs or video, often arresting (or threatening to arrest) those individuals for obstruction if they fail to comply – thus violating the photographer’s First Amendment rights. Codifying First Amendment protections in the obstruction statute itself will help to remind law enforcement officers that, absent actual interference with an officer’s duties, taking photographs or videos is not a crime. As such, S.B. 2439, S.D.1 will likely lead to fewer arrests and fewer violations of citizens’ First Amendment rights.

Thank you for the opportunity to testify.

Sincerely,

Mandy Finlay
Advocacy Coordinator
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.

American Civil Liberties Union of Hawaii
P.O. Box 3410
Honolulu, Hawaii 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org

Greetings Committee Chair Rhoads, my name is Lorentina Te'i and I am writing testimony to **SUPPORT** bill SB2439-SD1 (Relating to Law Enforcement videotaping of police in public.) This bill is a critical step to reforming the state's criminal justice system. Because the police are a public service that has no expectation of privacy in a public setting, to limit the video recording of these government agents performing service in public seems unconstitutional. Law enforcement providers are not a special class of citizens, but are instead government service delivery agents or street level bureaucrats. To restrict videotaping of police is paramount to restricting videotaping of the garbage man or other government service agents.

Additionally, nationwide it has been civilian video of police misconduct that has proven a national problem with police credibility. Police departments have been systematically coveting corrupt practices by strong arming citizens who attempt to expose corrupt police practices with video. Starting with the Rodney King (Los Angeles Police) video, and persisting through the Eric Gardner (New York City) video it has been private video that has allowed communities to expose bad officers, and begin the process of weeding them out.

It is critical that police understand that they are accountable to the public for how they deliver police services on behalf of the government. Ensuring that they understand that all eyes constantly watch them is necessary to stem the current exposed practices that have led to this legislation. I cannot stress the importance of this legislation as it pertains to dealing with the greater problem of understanding what is needed to remedy the current police problems in this state. This legislation is a critical oversight tool that should be passed. I therefore **support** the passage of this legislation.

Greetings Committee Chair Rhoads, my name is Paulo O.J Paulo and I am writing testimony to **SUPPORT** bill SB2439-SD1 (Relating to Law Enforcement videotaping of police in public.) This bill is a critical step to reforming the state's criminal justice system. Because the police are a public service that has no expectation of privacy in a public setting, to limit the video recording of these government agents performing service in public seems unconstitutional. Law enforcement providers are not a special class of citizens, but are instead government service delivery agents or street level bureaucrats. To restrict videotaping of police is paramount to restricting videotaping of the garbage man or other government service agents.

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SB 2439

Greetings Committee Chair Rhoads, my name is John Figueroa and I am writing testimony to **SUPPORT** bill SB2439-SD1 (Relating to Law Enforcement videotaping of police in public.)

This bill is a critical step to reforming the state's criminal justice system. Because the police are a public service that has no expectation of privacy in a public setting, to limit the video recording of these government agents performing service in public seems unconstitutional. Law enforcement providers are not a special class of citizens, but are instead government service delivery agents or street level bureaucrats. To restrict videotaping of police is paramount to restricting videotaping of the garbage man or other government service agents.

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HAWAII

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OFFICERS	DIRECTORS			MAILING ADDRESS
John Bickel, President	Guy Archer	Chuck Huxel	George Simson	PO. Box 23404
	Stanley Chang	Jan Lubin	Emmanuel Zibakalam	Honolulu
Marsha Schweitzer, Treasurer	Josh Frost	Jenny Nomura		Hawai'i 96823
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March 18 2016

TO: Honorable Chair Karl Rhoads, Vice Joy San Buenaventura, and Members of the Judiciary Committee

RE: SB 2439 SD1 Relating to Law Enforcement Support
3/18 Hearing

LATE

Americans for Democratic Action is a national organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

We support SB 2439 SD 1 as it would allow citizens to take video and use video in court even if the police have not consented to the video. Specifically it adds language to the violation of privacy provision by NOT prohibiting "a person from making a video or audio recording or taking a photograph of a law enforcement officer while the officer is in the performance of the officer's duties in a public place or under circumstances in which the officer has no reasonable expectation of privacy and the person is not interfering with the officer's ability to maintain safety and control, secure crime scenes and accident sites, protect the integrity and confidentiality of investigations, and protect the public safety and order."

Under current federal court interpretations, police may prosecute people for recording their activities in public unless the person can assert a First Amendment purpose for the recording. This has a chilling effect.

The essence of the justice system is to get at the facts and apply the law to those facts. This law would help in the first part of that process by encouraging the gathering of as much evidence as possible regardless of whom it benefits.

Thank you for your consideration.

Sincerely,

John Bickel
President

LATE TESTIMONY



Progressive Democrats of Hawai'i

<http://pd-hawaii.com>

1418 Mokuna Pl. Pl, Honolulu, HI 96816

email: info@pd-hawaii.com

tel: 808-542-9084

COMMITTEE ON JUDICIARY

Rep. Karl Rhoads, Chair

Rep. Joy San Buenaventura, Vice Chair

Friday, March 18, 2016

2 pm, Room 325

SB2439, RELATING TO LAW ENFORCEMENT

IN STRONG SUPPORT

Aloha Chair Rhoads, Vice Chair San Buenaventura, and members of the Committee.

Progressive Democrats of Hawaii strongly supports SB 2439, SD 1. This bill will protect persons who make audio or video recordings of police conduct in places where they cannot reasonably expect privacy from prosecution, so long as they are not actually physically interfering with ongoing law enforcement.

We are all aware that the job of being a police officer is often tough, even dangerous. We are grateful for the service of our good police officers. But we also recognize that there have been many instances, across the United States, of police officers abusing their authority, sometimes beating, even killing people through an inappropriate use of force.

And it has been citizens videotaping these abuses which has proven to be a very useful tool in establishing the facts of the events. As a result, many police officers resent the presence of cameras and camera phones and have attempted to prevent the acquisition of such evidence, often resulting in arrests. Just last week, an aide to New York Mayor Bill DeBlasio was arrested while videotaping police officers behavior against a mentally unstable citizen.

We all would think that the courts long ago recognized that we all have such a right as a constitutional right. However, the US Supreme Court has not done so.

While we have great confidence that the Hawaii Supreme Court would recognize this right under both the Hawaii and US Constitutions, the public really needs every layer of protection possible. Making such a protection explicit under Hawaii law will help protect this important right.

For these reasons, we strongly support SB 2439, SD 1, and urge the House Judiciary Committee to pass it. Thank you very much for this opportunity to testify.

Greetings Committee Chair Rhoads, my name is Roy Lovell and I am writing testimony to **SUPPORT** bill SB2439-SD1 (Relating to Law Enforcement videotaping of police in public.) This bill is a critical step to reforming the state's criminal justice system. Because the police are a public service that has no expectation of privacy in a public setting, to limit the video recording of these government agents performing service in public seems unconstitutional. Law enforcement providers are not a special class of citizens, but are instead government service delivery agents or street level bureaucrats. To restrict videotaping of police is paramount to restricting videotaping of the garbage man or other government service agents.

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Greetings Committee Chair Rhoads, my name is _____ and I am writing testimony to **SUPPORT** bill SB2439-SD1 (Relating to Law Enforcement videotaping of police in public.) This bill is a critical step to reforming the state's criminal justice system. Because the police are a public service that has no expectation of privacy in a public setting, to limit the video recording of these government agents performing service in public seems unconstitutional. Law enforcement providers are not a special class of citizens, but are instead government service delivery agents or street level bureaucrats. To restrict videotaping of police is paramount to restricting videotaping of the garbage man or other government service agents.

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Greetings Committee Chair Rhoads, my name is **Christina R Badua** and I am writing testimony to **SUPPORT** bill SB2439-SD1 (Relating to Law Enforcement videotaping of police in public.) This bill is a critical step to reforming the state's criminal justice system. Because the police are a public service that has no expectation of privacy in a public setting, to limit the video recording of these government agents performing service in public seems unconstitutional. Law enforcement providers are not a special class of citizens, but are instead government service delivery agents or street level bureaucrats. To restrict videotaping of police is paramount to restricting videotaping of the garbage man or other government service agents.

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Greetings Committee Chair Rhoads, my name is William Moore and I am writing testimony to **SUPPORT** bill SB2439-SD1 (Relating to Law Enforcement videotaping of police in public.) This bill is a critical step to reforming the state's criminal justice system. Because the police are a public service that has no expectation of privacy in a public setting, to limit the video recording of these government agents performing service in public seems unconstitutional. Law enforcement providers are not a special class of citizens, but are instead government service delivery agents or street level bureaucrats. To restrict videotaping of police is paramount to restricting videotaping of the garbage man or other government service agents.

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Greetings Committee Chair Rhoads, my name is Tim Baker and I am writing testimony to **SUPPORT** bill SB2439-SD1 (Relating to Law Enforcement videotaping of police in public.) This bill is a critical step to reforming the state's criminal justice system. Because the police are a public service that has no expectation of privacy in a public setting, to limit the video recording of these government agents performing service in public seems unconstitutional. Law enforcement providers are not a special class of citizens, but are instead government service delivery agents or street level bureaucrats. To restrict videotaping of police is paramount to restricting videotaping of the garbage man or other government service agents.

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Before the House Committee on
JUDICIARY

Friday, March 18, 2016
2:00 PM
State Capitol, Room 325

In consideration of
SENATE BILL 2439-SD1
RELATING TO A LAW ENFORCEMENT VIDEOTAPING OF POLICE BY CITIZENS

My name is Aaron Hunger and I am a doctoral researcher at the University of Hawaii at Manoa, a former police officer in Florida and California, and a criminal justice instructor for a private college in Honolulu. I have been honored to be engaged in doctoral research involving the Honolulu Police Department, and its oversight mechanisms since 2010. Together with my teaching, I have over 24 years of police experience. Currently, I am engaged in research with the University of Hawaii at Manoa that (among other issues) seeks to understand the unique structure of the criminal justice institutions on Oahu. Based on the unique composition of local policing organizations, one of many questions being answered is what effect (if any) does the absence of critical systemic oversight mechanisms (or their dysfunctionality) produce and how often. Based on the work and research that I have been privileged to be a part of, I **support** Senate Bill 2439-SD1 (Legalizing citizens videotaping of police activities), but recommend a minor amendment.

Of particular problem is the language that reads: “...provided that the officer may take reasonable action to maintain safety and control, secure crime scenes and accident sites, protect the integrity and confidentiality of investigations, and protect the public safety and order.”

Given how the Honolulu Police Department’s officers, supervisors, and managers reacted in several cases where citizen’s private video recordings proved gross policy violations and (in some instances) unwarranted violence toward the public¹, it does not seem prudent to allow officers and managers at the Honolulu Police Department the ability to dissect vague policy language in an attempt to seek the widest interpretation of their power and authority.

In this case the particular language that appears vulnerable to police re-interpretation is, “...protect the integrity and confidentiality of investigations, and protect the public safety and order.” Honolulu Police have (on several occasions) used their authority to “protect the integrity of a current investigation”, or “protect public safety and order” as justification for attempting to seize evidence of their individual misconduct that was captured on video tape. The cases of Honolulu Police Officer Robert Steiner (2014)², and Siave Seti Jr (2015) are just two of many other examples where police have used their

¹ (Daysog, 2015) (Daysog, 2014) (Hawaii News Network, 2013) (Kawano, 2014 (BCND)) (Kerr, 2014) (Kerr, 2015)

² (Grube, 2014 (PHM)) (Nick, 2015 (SLG))

power and authority to widely interpret search and seizure laws in an attempt to silence the public, by seizing video evidence of their unwarranted conduct through violence or intimidation.

I would recommend the following amendment to address this issue

SECTION 2. Section **711-1111**, Hawaii Revised Statutes, is amended by amending subsection (1) d) Installs or uses, or both, in any private place, without consent of the person or persons entitled to privacy therein, any means or device for observing, recording, amplifying, or broadcasting sounds or events in that place other than another person in a stage of undress or sexual activity; provided that this paragraph shall not prohibit a person from making a video or audio recording or taking a photograph of a law enforcement officer while the officer is in the performance **of** the officer's duties in a public place or under circumstances in which the officer has no reasonable expectation of privacy and the person is not interfering with the officer's ability to maintain safety and control, secure crime scenes and accident sites, protect the integrity and confidentiality of investigations, and protect the public safety and order;

Instead read

SECTION 2. Section **711-1111**, Hawaii Revised Statutes, is amended by amending subsection (1) d) Installs or uses, or both, in any private place, without consent of the person or persons entitled to privacy therein, any means or device for observing, recording, amplifying, or broadcasting sounds or events in that place other than another person in a stage of undress or sexual activity; provided that this paragraph shall not prohibit a person from making a video or audio recording or taking a photograph of a law enforcement officer while the officer is in the performance **of** the officer's duties in a public place or under circumstances in which the officer has no reasonable expectation of privacy and the person is not interfering with the officer's ability to maintain safety and control, secure crime scenes and accident sites, **or** protect the integrity and confidentiality of investigations, and ~~protect the public safety and order;~~

Police departments train (nationally) that officers have no expectation of privacy when performing their duties, and are thus always trained to be aware of the media, videotaping, and their conduct when providing police services. Additionally with the introduction of body cameras, police are trained to take measures to adjust their service delivery into guarding specifically sensitive aspects of an investigation (i.e., license plate numbers, homicide victim's identity, etc.) With police filming the public, there is no reason to limit citizens counter-filming of police service performance.

I **support** this bill, however suggest that ambiguous language be removed for clarity of purpose.

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 16, 2016 8:53 AM
To: JUDtestimony
Cc: leuluniuotineru@yahoo.com
Subject: Submitted testimony for SB2439 on Mar 18, 2016 14:00PM

SB2439

Submitted on: 3/16/2016

Testimony for JUD on Mar 18, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
leuluniu otineru	Individual	Support	No

Comments: Greetings Committee Chair Rhoads, my name is Leuluniu Otineru and I am writing testimony to SUPPORT bill SB2439-SD1 (Relating to Law Enforcement videotaping of police in public.) This bill is a critical step to reforming the state's criminal justice system. Because the police are a public service that has no expectation of privacy in a public setting, to limit the video recording of these government agents performing service in public seems unconstitutional. Law enforcement providers are not a special class of citizens, but are instead government service delivery agents or street level bureaucrats. To restrict videotaping of police is paramount to restricting videotaping of the garbage man or other government service agents. Additionally, nationwide it has been civilian video of police misconduct that has proven a national problem with police credibility. Police departments have been systematically coveting corrupt practices by strong arming citizens who attempt to expose corrupt police practices with video. Starting with the Rodney King (Los Angeles Police) video, and persisting through the Eric Gardner (New York City) video it has been private video that has allowed communities to expose bad officers, and begin the process of weeding them out. It is critical that police understand that they are accountable to the public for how they deliver police services on behalf of the government. Ensuring that they understand that all eyes constantly watch them is necessary to stem the current exposed practices that have led to this legislation. I cannot stress the importance of this legislation as it pertains to dealing with the greater problem of understanding what is needed to remedy the current police problems in this state. This legislation is a critical oversight tool that should be passed. I therefore support the passage of this legislation.

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 16, 2016 1:34 PM
To: JUDtestimony
Cc: victor.ramos@mpd.net
Subject: *Submitted testimony for SB2439 on Mar 18, 2016 14:00PM*

SB2439

Submitted on: 3/16/2016

Testimony for JUD on Mar 18, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Individual	Oppose	No

Comments:

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