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**To:** PSMTestimony  
**Cc:** dgoo@djspec.com  
**Subject:** Submitted testimony for SB1035 on Feb 7, 2017 13:20PM



**SB1035**

Submitted on: 2/7/2017

Testimony for PSM on Feb 7, 2017 13:20PM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dan Goo	Individual	Support	No

Comments: As a retired HPD Law Enforcement officer. I support this bill. they are trained and we need more people who are ready to act to protect our citizens. As a retired HPD officer, we cannot be every where all the time. It takes an average of 5-8 minutes to respond to a scene if you are in town.

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# Institute for Rational and Evidence-based Legislation

P. O. Box 41

Mountain View, Hawaii 96771

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February 7, 2017

## TESTIMONY ON SENATE BILL 1035 RELATING TO FIREARMS

Senate Committee on Public Safety, Intergovernmental, and Military Affairs  
Chair, Viced Chair, and Members

Please defer and defeat SB 1035. There is no evidence-based justification for creating another class of privileged people who will be granted the ability to lawfully exercise a fundamental individual enumerated constitutionally-guaranteed natural civil right while 100% of the “ordinary citizens” of Hawaii are denied that right. There is not one single “ordinary citizen” in the entire state of Hawaii who may lawfully exercise their right to bear arms outside their home or business for the purpose of self-defense. There have only been four(4) such individuals so privileged since the year 2000. I use the word “privileged” purposely, as the state of Hawaii has made a mockery of the very concept of the rights protected by the Second Amendment of the United States Constitution and the Constitution of the State of Hawaii, Article 1, Section 17, Right to Bear Arms. I remind all the legislators at this committee meeting that you have all sworn or affirmed an oath of office to uphold both of those constitutions. Please do so.

There are numerous arguments that lead one to defeat this bill. I include some here that have been modified from a brief filed in a lawsuit challenging extending special privileges to law enforcement officers regarding the lawful ability to carry firearms in public.

One set of rules and criteria should apply to all. AND, those criteria must result in law-abiding citizens have the ability to lawfully carry firearms in public. Such is not the case now in Hawaii and needs to be changed, the sooner the better. Creating another class of specially-privileged “better-than-others” citizens is NOT the way.

Please defer SB 1035 and instead create, sponsor and support a bill that will immediately allow ALL of Hawaii's law-abiding citizens to lawfully exercise all their Second Amendment and Article 1, Section 17 rights.

Some arguments:

“All animals are equal, but some animals are more equal than others.” Animal Farm, George Orwell.

The Bill of Rights has a specific purpose - to prevent the state majority from taking rights from the state minority, and to ensure that everyone has their core fundamental rights protected.

The State and the Counties of Hawaii refuse to recognize fundamental rights protected by the Second Amendment.

\* \* \* \* \*

In *District of Columbia v. Heller*, 554 U.S.570 (2008) the Supreme Court held that the Second Amendment protects an individual's right to possess firearms and use firearms for "immediate self-defense", unrelated to any militia context:

**We know of no other enumerated constitutional right whose core protection has been subjected to a freestanding "interest-balancing" approach. The very enumeration of the right takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is really worth insisting upon.**

**A constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all. Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad. We would not apply an "interest-balancing" approach to the prohibition of a peaceful neo-Nazi march through Skokie. See *National Socialist Party of America v. Skokie*, 432 U. S. 43 (1977) (per curiam). The First Amendment contains the freedom-of-speech guarantee that the people ratified, which included exceptions for obscenity, libel, and disclosure of state secrets, but not for the expression of extremely unpopular and wrong-headed views. The Second Amendment is no different. Like the First, it is the very product of an interest-balancing by the people—which Justice Breyer would now conduct for them anew. And whatever else it leaves to future evaluation, it surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home.**

**Justice Breyer chides us for leaving so many applications of the right to keep and bear arms in doubt, and for not providing extensive historical justification for those regulations of the right that we describe as permissible. See post, at 42-43. But since this case represents this Court's first in-depth examination of the Second Amendment, one should not expect it to clarify the entire field, any more than *Reynolds v. United States*, 98 U. S. 145 (1879), our first in-depth Free Exercise Clause case, left that area in a state of utter certainty. And there will be time enough to expound upon the historical justifications for the exceptions we have mentioned if and when those exceptions come before us.**

\* \* \* \* \*

The fact that a small group of people have the ability to exercise their right to bear arms starts the inquiry under strict scrutiny. Clearly, the Hawaii scheme creates a privileged class. Because the Second Amendment "confer[s] an individual right to keep and bear arms," this legislature must assess whether the Hawaii scheme favors a group of individuals in the free exercise of their constitutional rights. *Heller*, 554 U.S. at 595. The question is not whether the Hawaii scheme allows some people to bear arms outside the home in some places at some times; instead, the question is whether it allows the typical responsible, law-abiding citizen to bear arms in public for the lawful purpose of self-defense.

The answer to the latter question is a resounding "no."

Then the question is, applying strict scrutiny, why should certain groups be granted more rights under the Second Amendment.

This proposed law provides a single exemption to what is otherwise a complex statutory scheme providing carve-outs for active and retired peace officers set forth in the Hawaii Revised Statutes. This "carve-out" results in a massive transfer of a fundamental right from the People in general.

The privileged class is granted a lifetime CCW upon retirement without all the fees, red tape, and hurdles forced upon the People in essentially begging to exercise their fundamental right to keep and bear arms.

\* \* \* \* \*

Hawaii law provides specified exceptions from the general prohibition against public carry, these do little to protect an individual's right to bear arms in public for the lawful purpose of self-defense. The exemptions for particular groups of law enforcement officers, especially corrections officers, do not acknowledge nor accept the typical responsible, law-abiding citizen's the right to bear arms for self defense while away from home. And the exceptions for "making or attempting to make a lawful arrest" or for situations of "immediate, grave danger" (to the extent that they are not entirely illusory-for how would one obtain a gun for use in public when suddenly faced with such a circumstance?) do not cover the scope of the right, which includes the right to carry in case of public confrontation, not just after a confrontation has occurred. **Heller, 554 U.S. at 584 (defining *bear arms* to mean carrying a weapon "for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person."** It is as though Honolulu County banned all political speech, but exempted from this restriction particular people (like current or former police officers), particular places (like private property), and particular situations (like the week before an election).

Although these exceptions might preserve small pockets of freedom, they would do little to prevent destruction of the right to free speech as a whole. As the Court has said: "The Second Amendment is no different." **Heller, 554 U.S. at 635. It too is destroyed when exercise of the right is limited to a few people, in a few places, at a few times.**

\* \* \* \* \*

A. The Separate CCW Licensing Scheme for Corrections Officers Violates the Equal Protection Clause.

When it comes to self-defense, providing corrections officers with superior rights to that of ordinary law-abiding citizens does not further an important or compelling state interest. Appellants are entitled to the same fees, application process, rights, privileges and credentials that corrections officers receive.

Hawaii could enforce a law requiring a background check, marksmanship test, and safety course – but the issuance of the license itself would be no different than that of a drivers license being issued. The paperwork, procedures and fees must be the same for all!

For example, the government always states the notion that somehow law enforcement officers are superiorly trained and vetted entitling them to greater access to commonly used firearms and greater magazine capacity. According to this logic, a 21 year old police officer who never owned or fired a gun, but attends an 8 week POST academy, is more qualified than all other gun owners, including military veterans.

\* \* \* \* \*

Since a fundamental right is involved, the government is tasked to not only offer some theoretical reason why a corrections officer is more deserving of self-protection than the People, the legislators sponsoring and voting for this bill should have to prove it – but they cannot.

Thank you,  
George Pace

**LATE**

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 7, 2017 2:51 PM  
**To:** PSMTestimony  
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<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michael A. Wee	Individual	Oppose	No

Comments: Is this some kind of a "perk" for ACO's that ordinary citizens are denied? They only need firearms when they are actually at work. Totally unnecessary!

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**LATE**

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 7, 2017 2:07 PM  
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<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Victor K. Ramos	Individual	Oppose	No

Comments:

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