



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

ON THE FOLLOWING MEASURE:

S.B. NO. 2622, RELATING TO SELECTIVE SERVICE.

BEFORE THE:

SENATE COMMITTEES ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND
MILITARY AFFAIRS AND ON HIGHER EDUCATION

DATE: Thursday, February 8, 2018 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Russell A. Suzuki, Acting Attorney General, or
Deputy Attorney General Diane Erickson

Chairs Nishihara and Kahele and Members of the Committees:

The Attorney General has a concern about this bill.

This bill adds a new chapter to the Hawaii Revised Statutes, to be titled
"Selective Service Registration Awareness and Compliance Act."

This new chapter provides that any person who is not in compliance with the registration requirements of the federal Military Selective Service Act shall not be: (1) permitted to enroll in or receive education from a state-supported post-secondary institution, including any part of the University of Hawaii system; (2) eligible to receive a loan, grant, scholarship, or other financial assistance for post-secondary education that is provided, supported, or guaranteed by the State; and (3) eligible for employment by the State or any political subdivision.

Under the federal Military Selective Service Act, persons who fail to register for the selective service are ineligible to receive federal educational assistance or to be employed by the federal government. According to our information, as of 2018, only eight states have laws making persons who are not in compliance with Selective Service ineligible to attend state-supported post-secondary educational institutions. On the other hand, as of 2018, twenty-three states have laws similar to the federal law that conditions education assistance or state job eligibility, or both, on Selective Service registration. The remaining states have no laws dealing with this issue. The State of

Ohio provides that a person who is not in compliance with Selective Service is not prohibited from attending a publicly supported post-secondary institution, but must pay out-of-state tuition to do so.

Conditioning eligibility for education assistance and conditioning eligibility for state or county employment upon registration for Selective Service are legitimate areas of statewide concern. However, conditioning enrollment in a state-supported post-secondary institution upon such registration may be contrary to article X, section 6, of the Hawaii State Constitution, which provides in pertinent part that the Board of Regents shall "have exclusive jurisdiction over the internal structure, management, and operation of the university."

We also note that since 2002, Hawaii law has provided that anyone who is required to be registered with Selective Service and who applies for a state drivers' license or renewal thereof, is automatically registered with the Selective Service System. See, section 286-102.5, Hawaii Revised Statutes.

Thank you for the opportunity to present our concern.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committees on Public Safety, Intergovernmental, and Military Affairs
and Higher Education

February 8, 2018 at 2:00 p.m.

By

Donald O. Straney, Vice President for Academic Planning and Policy
University of Hawai'i System

SB 2622 – RELATING TO SELECTIVE SERVICE

Chairs Nishihara and Kahele, Vice Chairs Wakai and Kim, and members of the committees:

SB 2622 requires compliance with the Military Selective Service Act to be eligible for enrollment in a state-supported post-secondary institution, qualify for post-secondary education state financial aid, or be eligible for state or county employment or service.

The University of Hawai'i (UH) appreciates the goals of the Hawai'i Selective Service Commission, however has significant concerns about unintended consequences of SB 2622, including a potential for decreasing access to public higher education in Hawai'i for men between the ages of 18 and 26.

First, UH enrollment contingent on Selective Service registration may have a dampening effect on college attendance for young men. This is a concern. Males currently have lower college going rates than females in Hawai'i; 47% of males vs. 62% of females enroll in college directly out of public high schools. SB 2622 would subject young men between 18 and 26 years of age to additional screening before being eligible to enroll at the state's public university. This is not applied to other populations, for example, women, non-US citizens, those who attend private or out of state institutions, and others.

Second, an additional screening requirement would disadvantage the very students who take the initiative to apply and seek to enroll at our public higher education system after high school in Hawai'i. Data shows that of more than 13,500 graduates from public and private high schools in Hawai'i in 2017, approximately 5,500 students enrolled at UH campuses systemwide as first-time freshmen in the fall of 2017. Of these, fewer than half (47%) were male, and it is this smaller population subset, rather than those who do not apply to UH in the first place, that would be required to undergo additional screening before eligibility to enroll at UH.

Any student applying for federal financial aid via the Free Application for Federal Student Aid (FAFSA) is required by federal law to register for the Selective Service, and this federal aid information is downloaded to the University's student information

system. To implement the eligibility screening for state financial aid as well as university enrollment, however, would require an additional step to check applicants who have not applied for federal financial aid before admitting a male applicant. This requires additional administrative resources and is complicated because the Selective Service database uses social security numbers as identifiers and the University does not collect social security numbers at the admissions stage, nor do we collect it for non-FAFSA filers. After reviewing the data, applying selective service registration as an additional filter to allow or prohibit enrollment at UH or as eligibility for state aid may not produce as high a yield as anticipated by the intervention proposed in SB 2622.

According to the official website of the Selective Service System, only 8 out of 50 states require Selective Service registration for higher education admissions/attendance. Hawai'i does not have a state grant program similar to other states. UH is unique in its responsibility as the sole provider of public higher education in a state that is located at great geographic distance from other institutions and other options for students in Hawai'i.

For these reasons, the University of Hawai'i has serious concerns, and respectfully requests that SB 2622 be deferred.

Thank you for the opportunity to testify.

LATE



Selective Service System

Hawaii Headquarters

Committee on Public Safety, Intergovernmental, and Military Affairs

--and--

Committee on Higher Education

Testimony of Andrew L. Pepper, State Director, U.S. Selective Service System

Thursday, February 8, 2018 (2:00 p.m.)

SB 2622-- RELATING TO SELECTIVE SERVICE

I am Andrew Pepper, State Director for the United States Selective Service System. My role is to ensure young men¹ in Hawaii ages 18 through 25 register with the Selective Service System, as required by law. This helps ensure that these young people do not lose valuable Federal benefits linked to the registration requirement and helps ensure that any future military draft is fair and equitable to the residents of Hawaii.

Many people ask me the basic question: “Why do we still have the Selective Service System?” It is a fair question with an easy answer: The Selective Service System is our Nation’s ultimate insurance policy in that it

¹ Prior testimony opposing other Selective Service bills from the Hawaii Civil Rights Commission (“HCRC”) and the American Civil Liberties Union (“ACLU”) has asserted that the registration of only men violates the equal protection component of the due process clause. However, the U.S. Supreme Court held in 1981 that “male only” registration for Selective Service is *not* a violation of equal protection. See *Rostker v. Goldberg*, 453 U.S. 57 (1981) (<http://caselaw.findlaw.com/us-supreme-court/453/57.html>).

provides a ready source of personnel for national service should world events dictate the need for such personnel. The ability of the Selective Service System to rapidly deliver personnel for national service ensures that all potential adversaries understand both our national resolve and our national mobilization capabilities. Such “messaging” makes clear that military aggression by other governments would not result in a strategically positive outcome for those nations and their citizens. In other words, the deterrent effect of registration with the Selective Service System helps keep us safe and at peace.

The Selective Service System supports the passage of SB 2622 because it unquestionably will increase registration compliance in Hawaii. Only 73%-88% (depending on the year) of 18-year-old men in Hawaii have registered with Selective Service. This means that up to 27% of the young people in this critical age group are at risk of losing, *for life*, a host of federal benefits linked to the registration requirement. These benefits include: Federal employment, Federal student financial assistance, participation in Federally-funded job training programs, and eligibility for U.S. citizenship.

SB 2622 is not designed or intended to deny anyone access to student financial aid, a university education, or employment by the State. To the contrary, it is a good-faith attempt to create more opportunities for young people to discover that they are not in compliance with the registration

requirement of the Military Selective Service Act and, at that time, correct their non-compliance as part of their student financial aid or employment application process. Basically, SB 2622 is an attempt to create an additional safety net to help young people (who may be out of compliance with the Selective Service registration requirement) realize their status and be brought into compliance, thereby preserving their federal rights and benefits. A failure to preserve such rights can be heartbreaking (such as the loss of the right of naturalization by a person who has a deep desire to become a proud American citizen).

Thirty-one States around the Nation have already passed this type of legislation.² Passing SB 2622---to link eligibility for State supported student financial aid and governmental employment to Selective Service registration compliance--will further increase the registration compliance rate in Hawaii. It will also further remind young people in Hawaii of their civic and patriotic obligation to contribute to the defense of our country in a national emergency.

Registration with the Selective Service System is each citizen's contract with freedom.

The Selective Service System never seeks to impose burdens on our State government partners without reimbursing and supporting such efforts. For example, Hawaii already receives the highest *per capita* rate of any State

² Please see attached list describing other States' legislation.

in reimbursement for implementing registration tied to driver's licensing. See Haw. Rev. Stat. §286-102.5. The Selective Service System also notes that it has developed close and effective working relationships with the thirty-one other states that have adopted similar legislation and has implemented computer processing systems designed to minimize the effort required by our State agency partners.

In closing, passing SB 2622 will help ensure that the youth of Hawaii do not lose valuable Federal benefits linked to the registration requirement, ensure that any future draft is fair and equitable as possible, and will help remind young people of their patriotic obligation to contribute to the defense of our country in a national emergency.

Thank you for the opportunity to submit this testimony.

Very Respectfully,

LATE



Andrew L. Pepper
State Director
U.S. Selective Service System



Selective Service System

Hawaii Headquarters

LATE

Re: SB419 SD2 HD1

The Solomon Amendment added Section 12(f) to the Military Selective Service Act in September 1982. Male students who have a requirement to register with Selective Service must satisfy that requirement as an eligibility precondition for receipt of Title 4 federal student financial aid. Title 4 aid includes such need-based programs as Guaranteed Student Loans and Pell Grants.

In November 1985, the Thurmond Amendment to the Defense Authorization Act established Title 5 U.S. Code § 3328, which requires Selective Service registration (of men who are required to register) as a prerequisite for appointment to most federal jobs.

Thirty-one states have laws that mirror, reinforce, or strengthen these two federal laws:

1. Alabama: Requires Selective Service registration to be eligible to enter institutions of higher learning. Registration is also required as a prerequisite for state employment and promotion.
2. Alaska: Requires men to register with the Selective Service System as a precondition to state employment, to receive state financial aid for school, and unique to Alaska, to receive a permanent fund dividend.
3. Arizona: Requires registration with the Selective Service System as a condition for state financial aid for school as well as a precondition for state employment.
4. Arkansas: Requires registration with the Selective Service System as a condition for receiving a state education loan, scholarship, or other state financial assistance. Also, requires compliance with the Military Selective Service Act as a precondition for state employment or enrollment in a public institution of higher learning.
5. California: Requires Selective Service registration as a precondition for state student financial aid.

LATE

6. Colorado: Requires statement of compliance from male students born after December 31, 1959, before they are allowed to enroll at a state supported college or university.
7. Delaware: Requires Selective Service registration as a precondition for state employment and state student financial aid.
8. Florida: Requires Selective Service registration as a precondition for state student financial aid. Registration also required as a precondition for state employment.
9. Georgia: Requires Selective Service registration as a precondition for state student financial aid. Proof of registration also is a precondition for state employment.
10. Idaho: Young men must be registered with the Selective Service System to be eligible for state employment and state enrollment in post-secondary institutions, including financial aid for this schooling.
11. Illinois: Selective Service registration is a precondition for state student financial aid and later registration became a precondition for state employment.
12. Kentucky: State regulations require a statement of compliance with the Military Selective Service Act as a precondition for participating in the state educational loan program.
13. Louisiana: Louisiana has a law in which Selective Service registration is required for entry to any state school. Another law requires Selective Service registration to be eligible for certain classified and unclassified state civil service positions.
14. Maine: Requires Selective Service registration as a precondition for state student financial aid.
15. Massachusetts: Requires Selective Service registration as a precondition for state student financial aid.
16. Mississippi: Enacted two pieces of legislation. One requires Selective Service registration as a precondition for state student financial aid. The other requires registration as a precondition for state employment.
17. Missouri: Requires Selective Service registration as a precondition for state employment and state student financial aid.
18. Montana: Requires Selective Service registration as a precondition for state employment and state student financial aid.

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19. New Hampshire: Young men must be registered with Selective Service to be eligible for state employment and state enrollment in post-secondary institutions, including financial aid for this schooling.
20. New Jersey: Requires Selective Service registration as a precondition for state student financial aid.
21. North Carolina: Enacted two pieces of legislation: One requires Selective Service registration for certain veterans' dependents financial aid programs and another requires registration as a precondition for state employment and state educational assistance.
22. North Dakota: Selective Service registration is a precondition for student financial aid.
23. Ohio: Requires Selective Service registration as a precondition for state student financial aid. Requires any resident male not registered with Selective Service to pay out-of-state tuition rate.
24. Oklahoma: Requires Selective Service registration as a precondition for state student financial aid.
25. South Dakota: Requires Selective Service registration before acceptance to all state schools and as a precondition to state employment.
26. Tennessee: Requires Selective Service registration before acceptance to all state schools. Registration is also required as a precondition for state employment.
27. Texas: Requires men to be in compliance with Selective Service registration requirement to be eligible for state student financial assistance. State employment also is contingent upon Selective Service registration or exemption.
28. Utah: Requires Selective Service registration as a precondition for state student financial aid.
29. Virginia: Enacted two pieces of legislation. One requires Selective Service registration as a precondition for student financial aid. Another requires registration as a precondition for state employment.
30. West Virginia: Requires Selective Service registration as a precondition for state student financial aid and state employment.
31. Wisconsin: Requires Selective Service registration as a precondition for state employment and state student financial aid.



LATE

Committee: Committee on Public Safety, Intergovernmental, and Military Affairs and
Committee on Higher Education
Hearing Date/Time: Tuesday, February 8, 2018, 2 p.m.
Place: Conference Room 229
Re: *Testimony of the ACLU of Hawai'i in opposition to S.B. 2622,
Relating to Selective Service*

Dear Chair Nishihara, Chair Kahele, and Committee Members:

The American Civil Liberties Union of Hawai'i ("*ACLU of Hawai'i*") writes **in opposition** to S.B. 2622, which bans men ages 18-25, who fail to register with the selective service, from enrolling in a state-supported post-secondary educational institution, qualifying for state financial assistance, or being considered for county or state employment.

Forcing individuals into registering for military service, absent an extreme national emergency, poses a serious burden on civil liberties, including the right to freedom of association, the right to be free from involuntary servitude, and the right to privacy. Imposing and enforcing such burden should not be taken lightly. Should this measure pass into law, conscientious objectors who oppose military service due to religious or cultural belief may be barred from enrolling in a state college or university or obtaining public employment. This would mean that a man who objects to registration—and not just military service—based on his personal belief and participation in the Hawaiian sovereignty movement may be forced to choose between his cultural and political beliefs and pursuing an education.

Further, the Military Selective Service Act discriminates on the basis of sex, as only men are required to register. The justification proffered for this discrimination relies on archaic stereotypes about gender roles and women's capabilities — justifications that have no basis in reality and undermine the accomplishments of women who have valiantly served in our military, including those who have served, more recently, in combat roles. The ACLU of Hawai'i opposes all attempts to codify such discrimination into state law.

This measure could also have grave consequences for Deferred Action for Childhood Arrivals ("*DACA*") recipients. Although DACA recipients are required to register with the selective service, they may be afraid to do so out of fear that this information may be shared and used against them in the future. In light of recent actions by the President, such as the rescission of DACA, this fear is not unfounded.

In summary, withholding state educational and employment opportunities are both unrelated and simply the wrong way to enforce military selective service registration requirements. For these reasons, the ACLU of Hawai'i urges the Committee to defer this measure.

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
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E: office@acluhawaii.org
www.acluhawaii.org

Thank you for the opportunity to testify.

Sincerely,



Mateo Caballero
Legal Director
ACLU of Hawai'i

The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i 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 Hawai'i has been serving Hawai'i for 50 years.

THE LIBERTARIAN PARTY OF HAWAII
TESTIMONY

c/o 1658 Liholiho St #205
Honolulu, HI 96822

February 5, 2018

RE: SB 2622 to be heard Thursday February 8, in Room 229, at 2:00 PM

To the members of the Senate Committees on Public Safety and Higher Education

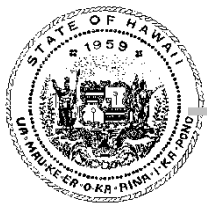
The Libertarian Party **strongly opposes** this measure. As a practical matter there is no threat of any kind to US security that will ever require large numbers of military personal. We have far too many human and fiscal assets tied up right now in a conventional military. All the threats can dealt with our nuclear deterrence or with small anti-terrorism units. The military has largely become a tool to waste tax money on pork spending around the country.

As a matter of principal we are supposed to be living in a free country. Compulsive military service in times of real need is offensive enough. Compelling our young people to register for a non-existent draft is an insult to the basic concepts of what we are supposed to stand for. Since our Hawaii State Constitution includes a guaranteed right to liberty I don't think this bill is even constitutional.

Aloha



Tracy Ryan
For The Libertarian Party of Hawaii



HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 · PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

February 8, 2018
Rm. 229, 2:00 p.m.

To: The Honorable Clarence K. Nishihara, Chair
Members of the Senate Committee on Public Safety, Intergovernmental and Military Affairs

The Honorable Kaiali‘i Kahele, Chair
Committee on Higher Education

From: Linda Hamilton Krieger, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: S.B. No. 2622

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services (on the basis of disability). The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights.

Article I, section 5 of the Hawai‘i Constitution provides:

No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, *nor be denied the enjoyment of the person’s civil rights or be discriminated against in the exercise thereof because of race, religion, sex, or ancestry.*
(emphasis added).

The HCRC strongly opposes S.B. No. 2622, because it codifies sex discrimination into state law.

S.B. No. 2622, if enacted, will prohibit *males* who fail to register with the Selective Service System from: enrolling at, or receiving education from, any campus of the University of Hawai‘i System; receiving state educational financial assistance; and being eligible for county or state employment or service. On its face, because the federal Selective Service Act only applies to males, the proposed prohibition is limited to males. It imposes a discriminatory burden on men that does not apply to women. In addition, the new prohibition would likely bar young men who are conscientious objectors based on their religious beliefs from state higher education and county or state employment or service, including service in elected office.

The HCRC strongly opposes S.B. No. 2622, and urges the Committee to hold the bill.

LATE

SB-2622

Submitted on: 2/7/2018 4:30:08 PM

Testimony for PSM on 2/8/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Ho'omanapono Political Action Committee (HPAC)	Oppose	Yes

Comments:

We STRONGLY OPPOSE this bill on the grounds that it may violate the First Amendment Clause of "Freedom of Association".

SB-2622

Submitted on: 2/7/2018 5:06:42 PM

Testimony for PSM on 2/8/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Ho`omana Pono, LLC	Oppose	Yes

Comments:

In violation of our first amendment right of our males...

SB-2622

Submitted on: 2/5/2018 5:32:15 PM

Testimony for PSM on 2/8/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
William K. Chang	Citizen	Support	No

Comments:

SB-2622

Submitted on: 2/5/2018 7:52:44 PM

Testimony for PSM on 2/8/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Pat McManaman		Oppose	No

Comments:

February 5, 2017

To: Committee on Veterans, Military and
International Affairs, and Culture and the Arts

From: Patricia McManaman

TESTIMONY IN OPPOSITION TO SB 2622 RELATING TO SELECTIVE SERVICE

Senate Bill 2622 requires State and City and County employers to deny employment to individuals who are not registered pursuant to the federal Military Selective Service Act. It also denies enrollment and financial assistance in Hawaii's state funded colleges and universities to individuals who have failed to register pursuant to the federal Military Selective Service Act.

- Effective January 1, 2002, Hawaii requires all males, age 18 through 25, who apply for a Hawaii Driver's License, permit or state I.D. card, to be automatically registered with the Selective Service System.
- According to the Selective Service System website, 88% of all Hawaii males required to register had, in fact, registered in 2016.
- Complying with Senate Bill 2262 would require significant modification of computer systems at Hawaii's colleges and universities as well as all State and County employers, including the Legislature. While the exact cost to implement and maintain the required computer system changes is unknown at the time, it will not be insignificant. With so many unmet needs in Hawaii, the Legislature should decline to invest State dollars to support this federal requirement.
- The proposed legislation will negatively impact and discriminate against young adult males seeking government employment or enrollment in state funded colleges and universities as the current federal registration requirements apply only to young adult males, many of whom inadvertently failed to register.

- The proposed legislation will also bar young adult male conscientious objectors from state funded colleges and universities and county or state employment despite a clear and unambiguous federal exemption from military service for these individuals. Current military policy defines a conscientious objection as a, “firm, fixed, and sincere objection to participation in war in any form or bearing of arms, by reason of religious training and/or belief.”

There is simply no need or federal requirement to intervene or supplement the current federal regulatory scheme. Hawaii’s rate of registration is relatively high, the proposed penalties economically penalize individuals who inadvertently failed to register, and will impose uncalculated costs on Hawaii and County IT systems to verify registration.