



HAWAI‘I STATE ETHICS COMMISSION

State of Hawai‘i · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawai‘i 96813

Committee: Committee on Government Reform
Bill Number: H.B. 1244
Hearing Date/Time: Friday, February 12, 2021, 10:00 a.m.
Re: Testimony of the Hawai‘i State Ethics Commission
with **COMMENTS** on H.B. 1244, Relating to Ethics

Chair McKelvey, Vice Chair Wildberger, and Committee Members:

The Hawai‘i State Ethics Commission (“Commission”) provides the following comments on H.B. 1244, which seeks to amend the Fair Treatment law, Hawai‘i Revised Statutes (“HRS”) § 84-13, to provide that the “mere reuse of an image documenting a historical, governmental event” is not a violation of the Ethics Code.

The Commission is unclear as to the purpose of this provision, but cautions that it could lead to unnecessary entanglement between public proceedings and private endeavors. For example, it is possible that this provision could be read to allow legislators to use official photographs of legislative sessions in their campaign materials – something that is expressly prohibited in the United States House of Representatives. See United States Representatives, Committee on Ethics, “General Prohibition Against Using Official Resources for Campaign or Political Purposes,” available at <https://ethics.house.gov/campaign/general-prohibition-against-using-official-resources-campaign-or-political-purposes> (“a Member may not film a campaign commercial or have campaign photos taken in a congressional office.... Broadcast coverage and recordings of House floor proceedings may not be used for any political purpose In addition, . . . radio and television tapes and film of any coverage of House committee proceedings may not be used, or made available for use, as partisan political campaign material to promote or oppose the candidacy of any person for public office.”).

While private individuals and businesses (and political candidates) might be allowed to use images that are in the public domain without a violation of the Code of Ethics, the Commission is concerned that state officials may abuse this provision. For example, a state official may use a government facility as a prop – as the backdrop for a private endeavor or stunt – rather than to work on behalf of the public. Similarly, a state official may use state resources (e.g., by issuing directives to subordinate employees) to create photographs and other media with the intention of using that material for private purposes; once the material is produced using state resources, the state official could then take those materials for private purposes – thus circumventing the clear intention of the Fair Treatment law.

Additionally, it is unclear whether this provision would apply only to photographs that are already in the public domain (in other words, posted on the internet or otherwise published) or whether this provision would apply to all photographs in the possession of a state official in that person’s state capacity. For example, if a legislative staffer takes photographs at an event

but does not publish those photographs to the general public – such that only that individual legislator is aware of the existence of the photographs – it is unclear whether those photographs could be used by a political campaign or another private interest; no other member of the public (or political campaign) would even be aware that these photographs exist, so allowing the use of any previously unpublished photographs would seem to give an unwarranted advantage to the private activities of the state officials possessing the photos.

As such, the Commission respectfully requests additional clarification as to the intent of this measure so that, if it becomes law, the Commission can administer this provision effectively.

Thank you for your continuing support of the Commission's work and for considering the Commission's testimony on H.B. 1244.

Very truly yours,

Daniel M. Gluck
Executive Director & General Counsel