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March 12, 2025

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S.B. No. 307, SD2: RELATING TO RECORDINGS OF LAW ENFORCEMENT ACTIVITIES

Chair Sayama, Vice Chair Lee, and Members of the Committee:

The Office of the Public Defender strongly supports S.B. No. 307, SD2.

This measure establishes the right of persons to record law enforcement activities. It also establishes a right of action for violations of said right.

On November 20, 2012, a journalist, while driving along Haleakala Highway, pulled over onto the shoulder to investigate an ongoing law enforcement operation. The journalist began filming two Maui Police Department officers who were conducting a traffic stop. After the officers and the journalist engaged in a brief discussion as to where the journalist can stand, the journalist was arrested for interfering with government operations. The journalist was subsequently charged with the offense of failure to comply with a lawful order or direction of a police officer, in violation of HRS § 291C-23, and the offense of disorderly conduct, in violation of HRS § 711-1101(1)(d). Prior to trial, the journalist moved to dismiss the charges because his conduct was protected by the first amendment. After the district dismissed the charges, the prosecuting attorney appealed the dismissal order.

On appeal, the Hawai'i Supreme Court, in State v. Russo, 141 Hawai'i 181, 407 P.3d 137 (2017), held that the journalist's filming of government officials engaged in their duties in a public place is protected by the first amendment rights to free speech and press. The Court noted that numerous jurisdictions have held that the first amendment affords individuals the right to photograph and film police officers in public places. See Glik v. Cunniffe, 655 F.3d (1st Cir. 2011) (promotion of the free discussion of government operations is particularly desirable in the context of law

enforcement officials because it may aid in the uncovering of abuses and have a salutary effect on the functioning of government more generally); Gentile v. State Bar of Nevada, 501 U.S. 1030, 111 S.Ct 2720 (1991) (dissemination of information relating to alleged governmental misconduct” lies “at the core of the First Amendment); Turner v. Lieutenant Driver, 848 F.3d 678 (5th Cir. 2017) (“We agree with every circuit that has ruled on this question: Each has concluded that the First Amendment protects the right to record the police”); Fields v. City of Philadelphia, 862 F.3d 353 (3rd Cir. 2017) (bystanders have a right to record public police activity).

Even though the Hawai‘i and the United States Constitutions already afford an individual the right to record law enforcement officers, this measure is necessary to ensure that the individual has the right to maintain custody and control of any recording and of any property or instrument used to record the law enforcement activities. And more importantly, this measure is necessary to secure the individual’s right to bring a cause of action against the offending law enforcement officer and the law enforcement agency. Otherwise, there is nothing to prevent law enforcement from infringing upon the individual’s first amendment rights. Without consequences, law enforcement will continue to unconstitutionally prevent individuals from recording their activities.

Thank you for the opportunity to comment on this measure.



House Committee on Labor

Thursday, March 13, 2025, 9 AM Hearing in Conference Room 309 on
SB 307, SD2, Relating to Recordings of Law Enforcement Activities

TESTIMONY

Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Sayama, Vice Chair Lee, and Committee Members:

The League of Women Voters of Hawaii supports SB 307, SD2. Almost no one voluntarily admits that their behavior was inappropriately abusive or violent. Video recordings can be used to prove what was actually said and done. That is why the public should have the statutory right to record law enforcement activities and file lawsuits when necessary to protect this right.

Thank you for the opportunity to submit testimony.



Committee on Labor

Hearing Date/Time: Thursday, March 13th, 2025 at 9:00am

Place: Conference Room 309, 415 South Beretania Street

Re: **Testimony of the ACLU of Hawai'i in SUPPORT of S.B. 307 SD2 Relating to Recordings of Law Enforcement Activities**

Dear Chair Sayama, Vice Chair Lee, and Committee Members:

The ACLU of Hawai'i SUPPORTS **S.B. 307 SD2**, which codifies and protects the public's constitutional right to record law enforcement activities. S.B. 307 will protect members of the public who play a key role in recording officer behavior, which allows for greater transparency and serves to correct abuse of law enforcement powers. Law enforcement officers ultimately answer to the public, and S.B. 307 SD2 will help provide necessary accountability to officers from the people they are tasked with serving.

Taking photographs and video of things plainly visible in public spaces-including police and other government officials carrying out their duties-is a constitutional right. The First Circuit in *Glik v. Cunniffe* (2011) affirmed that "the filming of government officials engaged in their duties in a public place, including police officers performing their responsibilities, fits comfortably within" First Amendment principles. Similar rulings in Hawai'i (*State v. Russo*), the 3rd Circuit (*Fields v. City of Philadelphia* noted that recording the police is protected even if lacking an expressive intent in the moment) in 2017 and 5th Circuit (*Turner v. Driver*) reinforce this right.

Despite these cases, law enforcement officers routinely order people to stop recording in public places, often harassing, detaining, and arresting those who fail to comply. Recording the police creates an independent record of incidents, avoiding issues of bias or faulty memory. Such documentation has proven crucial in exposing misconduct. S.B. 307 strengthens the right to record by providing a private right of action to protect citizens who face backlash.

S.B. 307 SD2 protects First Amendment rights and strengthens public oversight. It also promotes the mutual interests of law enforcement and the communities they serve by increasing legitimacy and trust in law enforcement activities. **Please pass S.B. 307 SD2.**

Sincerely,

Nathan Lee

Policy Legislative Fellow, ACLU Hawai'i

C: Carrie Ann Shirota, Policy Director

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 founded in 1965 that provides its services at no cost to the public and does not accept government funds.



House Committee on Labor
Honorable Jackson D. Sayama, Chair
Honorable Mike Lee, Vice Chair

RE: Testimony in support of S.B. 307 S.D. 2, Relating to Recordings of Law Enforcement Activities
Hearing: March 13, 2025 at 9:00 a.m.

Dear Chair and Members of the Committee:

My name is Ben Creps. I am a staff attorney at the Public First Law Center, a nonprofit organization that promotes government transparency.

Thank you for the opportunity to submit testimony in **support** of S.B. 307 S.D. 2. This measure codifies the right of a person to record law enforcement activities. Citizens should be able to record police activity to promote transparency, hold law enforcement accountable, and protect civil rights.

Thank you again for the opportunity to testify in support of S.B. 307 S.D. 2.

