



**Senate Judiciary Committee
Sen. Karl Rhoads, Chair
Sen. Mike Gabbard, Vice Chair**

January 28, 2025, at 9:15 A.M.

RE: SB 117, Relating to Defamation

Aloha Chair Rhoads, Vice Chair Gabbard, and members of the Committee:

Society of Human Resource Management – Hawaii (“SHRM”) respectfully opposes SB 117, relating to defamation:

We appreciate the legislature’s intent to provide additional protections to individuals who make truthful claims about sexual misconduct. At the same time, we have serious concerns about this measure as currently drafted. Employers are required to ensure that employee claims of sexual misconduct are investigated and appropriately addressed. Truth and substantial truth are already absolute defenses to defamation claims. Moreover, a plaintiff cannot establish a defamation claim without first proving that the allegedly defamatory statements made about them are false. Removing truth and falsity as the standards for determining whether complaints are appropriately filed is a dangerous proposition. Protecting and encouraging victims of harassment to report is important but should not be done in disregard of truth.

Case law has long provided defendant the affirmative defenses of truth or substantial truth. Actionable defamation must be false to be actionable and only facts are capable of being proven true or false. Thus, employees remain free to make complaints based on pure opinion and cannot be subjected to defamation claims where their reports of harassment are based on opinion. Finally, proving actual malice is a rare and extremely high standard. Creating statutory exclusions to a truth standard, and substituting with an actual malice standard will remove an important check that has long remained in place to ensure that reports are based on truth, as opposed to other nefarious purposes. Please do not advance this measure.

We seek to serve as a resource to legislators regarding this and other matters pertaining the human resource management. SHRM Hawaii represents nearly 600 members and employers’ statewide and human resource management is a critical component to the success of the many businesses that make up our local economy.

Mahalo for the opportunity to provide testimony,
Erin Kogen and Rosanne M. Nolan
Co-chairs, SHRM Legislative Affairs Committee



SHRM Hawaii, P. O. Box 3175, Honolulu, Hawaii (808) 447-1840

LATE

SB-117

Submitted on: 1/27/2025 10:15:50 AM

Testimony for JDC on 1/28/2025 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Michael EKM Olderr	Individual	Comments	Written Testimony Only

Comments:

I support this bill, but I have questions about its enforceability, mainly regarding the criteria for malice. And how the determination of a claim being made in malice in a way that doesn't require retraumatizing the victim. I don't want to sound biased, but there have been instances in the past 100 years where false accusations have been used to justify mass civil unrest and prejudice against minority groups. That being said, I think it's vital that predators get called out, and justice shall be granted to their victims. I don't think this bill is a tipping point between one getting in the way of the other. I just want the legislative to be critical in how they approach this topic.

LATE

SB-117

Submitted on: 1/27/2025 7:27:33 PM

Testimony for JDC on 1/28/2025 9:15:00 AM

Submitted By	Organization	Testifier Position	Testify
Nonohe Botelho	Individual	Oppose	Written Testimony Only

Comments:

I strongly OPPOSE SB117 on its merit. A person who makes a claim of sexual misconduct must have clear and specific, evidence that such a crime has been committed. If this threshold is not met there is no case and the claims could be viewed as "false allegations."

In addition, the word "Malice," is too narrow. SB117 needs to broaden the language to include "forethought, intentional, knowingly, willfully, and retaliatory."

Please OPPOSE this measure on its merit.