



**House Judiciary & Hawaiian Affairs Committee  
Rep. Tarnas, Chair  
Rep. Poepoe, Vice Chair**

**March 11, 2025, at 2:00 P.M.**

**RE: SB 117 SD1, Relating to Defamation**

Aloha Chair Tarnas, Vice Chair Poepoe, and members of the Committee:

**Society of Human Resource Management – Hawaii (“SHRM”) respectfully opposes SB 117 SD1, 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

March 10, 2025

Dear Members of the Hawaii House Judiciary Committee:

I urge you to support SB 117 which strengthens protections for survivors speaking out about sexual abuse. Too often, abusers weaponize defamation lawsuits to silence their accusers through fear and financial burden. This bill closes the loophole in Hawaii's Anti-SLAPP legislation with a law that will better protect free speech and help survivors seek justice without intimidation.

My name is Victoria Burke, and I first proposed this critical bill to all members of the Hawaiian legislature via email.

In 2022, I drafted and introduced the *Right to Speak Your Truth Act*, which later became the foundation for California's AB 933. That bill was signed into law on October 10, 2023, making California the first state to explicitly protect survivors from retaliatory defamation lawsuits designed to silence them. Hawaii's SB 117 was modeled after AB 933's language. After successfully passing this law in California, I have worked to expand these protections nationwide. So far, 15 states—including CT, HI, IA, IL, KS, MA, MD, ME, NH, NJ, NY, OR, PA, RI, and VT—have introduced similar legislation in the 2025 session, with more expected to follow.

My motivation to draft the bill was sparked by my own story as a survivor. In December 2019, I went to dinner with a male friend whom I believe drugged my drink. One minute I am in the restaurant and the next minute I am waking up to bright light in the emergency room, coming out of a severe coma. I had been found by paramedics unresponsive in a parking lot, lying in a pool of my own vomit, with my top undone. I went to the police shortly after I was released from the hospital, expecting an arrest to be made. Unfortunately, the police lost both my blood evidence and the video evidence, meaning that an arrest is all but impossible. The only thing I had left that resembled justice was to be able to tell people what had happened to me. Or so I thought.

When I told a friend what had happened to me, she warned me not to name my abuser or include any identifying details—that I could be sued for defamation. This warning shocked me, especially since she was a defamation attorney. I had always believed the law protected you so long as your statements were true or clearly opinion. I felt safe speaking out because either he had drugged my drink, or it was my opinion that he had. The blood evidence was lost, meaning he could not be ruled out as having drugged me. But my friend explained that, in the wake of #MeToo, a wave of retaliatory lawsuits had emerged to silence victims.

These weaponized lawsuits are having a chilling effect on survivors coming forward. These lawsuits brought against survivors are usually meritless and quite impossible for the plaintiff to win (because two people go into a room, and two people exit a room...there is usually little physical evidence to prove what actually happened, especially if the incident occurred years ago). Previously, both sides could simply give their version of events. But now, a wave of frivolous lawsuits clogging an already burdened judiciary system are being put forth. These lawsuits are not filed with the possibility of prevailing, but instead for the purpose of silencing those speaking out about what happened. A common theme is an imbalance of power and money between those who file these lawsuits and the survivor defendant. (For example, Bill Cosby had filed defamation lawsuits against several of his victims.) The ACLU of Ohio summed up characteristics of these lawsuits<sup>1</sup>:

*One of the key characteristics of a SLAPP [Strategic Lawsuit Against Public Participation] suit is that the lawsuit is not necessarily designed to achieve a favorable verdict. Instead, it is designed to intimidate the target in order to discourage them and others from speaking out on an issue of public importance.*

*In addition to engendering fear and intimidation, the party initiating the suit (SLAPPOR) often seeks to bleed the other party (SLAPPEE) of resources and produce a chilling effect, not only on the SLAPPEE's expression of First Amendment rights **but also on those who consider speaking out on the issue in the future.***

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<sup>1</sup>[https://www.acluohio.org/en/what-slapp-suit#:~:text=SLAPPs%20are%20usually%20disguised%20as%20ordinary%20civil,spoken%20\(stlander\)%2C%20which%20damages%20the%20plaintiff%27s%20reputation.](https://www.acluohio.org/en/what-slapp-suit#:~:text=SLAPPs%20are%20usually%20disguised%20as%20ordinary%20civil,spoken%20(stlander)%2C%20which%20damages%20the%20plaintiff%27s%20reputation.)

Survivors often choose silence to avoid years of costly litigation. But society benefits when predators are exposed. The man I believe drugged me later sexually harassed two women and was ultimately banned from a shared space after their complaints. Predators rarely stop at one victim—silence lets them keep hunting. Using my expertise as an attorney and adjunct law professor, I drafted a bill to address the problem of weaponized defamation lawsuits (which curb survivors' First Amendment Right to Free Speech), while still protecting access to the courts for those falsely accused. You will find SB 117 balances both vital interests, because these bills were based upon what ultimately became California bill AB 933, the latter of which was vetted by the ACLU to protect all parties involved. Additionally, the bill allows for those survivors who prevail as defendants to recover reasonable attorney fees, which incentivizes attorneys to take on these cases of clients with little financial means.

**Why Hawaii's current Anti-SLAPP law is insufficient:**

Hawaii's current Anti-SLAPP statute offers limited protection:

1. The law is too narrow; only applying to statements that were made in a "legislative, executive, judicial, administrative, or other government proceeding". [Most statements made by sexual assault victims are to other people or on social media, as most memorably demonstrated by the those using the hashtag during the #MeToo Movement].
2. The language excludes protection for victims of sexual assault, sexual harassment, and sexual discrimination; Anti-SLAPP only protects "communications on an issue under consideration by any of those bodies [i.e. "legislative, executive, judicial, administrative, or other government proceeding"]". Sexual assault is often construed legally as a private issue and not a public interest in the eyes of the law. How broadly a court allows this interpretation leads to inconsistent justice and results.

**Why the Hawaiian bill SB 117 is necessary:**

1. The bill language explicitly states protection is for those speaking out about **sexual assault, sexual harassment, and sexual discrimination** (this bill states it in plain language).
2. This proposed bill is broad enough to cover statements made in any forum, such as in the circumstances of the #MeToo movement.
3. The proposed bill also addresses the "what if" scenario of if a case proceeds against the survivor, but the survivor-as a defendant-ultimately prevails. The bill addresses this by making the defendant able to recover attorney fees.
4. Sexual assault survivors need a bill that explicitly protects their First Amendment right to speak out with clear and concise language.
5. This bill still allows access to courts for those falsely accused who can show the statements were made with malice.

Moreover, it is far too burdensome to put upon the shoulders of a sexual assault victim the duty to have to safeguard and protect their abuser's reputation while also trying to heal from the trauma experienced. If the abuser can gag the victim and curate what the victim can—and cannot—say ad infinitum, then I put forward that this ability to gag the victim is nothing less than the continuation of the initial attack. So long as the abuser can exert control over the victim, the attack is still in progress.

The language of this bill protects access to court for those falsely accused while creating disincentives for those who would weaponize a meritless lawsuit to bully a victim of sexual abuse into silence. No one is barred from bringing a defamation lawsuit so long as the statement was malicious.

Please lend your support to this very important bill SB 117...the survivor you are protecting might be someone you already know.

Respectfully yours,  
Victoria Burke  
(Attorney, Adjunct Law Professor, Survivor)