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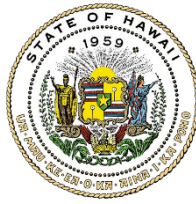
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March 16, 2025

S.B. No. 307, SD2, HD1: RELATING TO RECORDINGS OF LAW ENFORCEMENT

Chair Tarnas, Vice-Chair Poepoe, and Members of the Committee:

The Office of the Public Defender **supports SB 307, SD2, HD1**. 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 Judiciary & Hawaiian Affairs

Tuesday, March 18, 2025, 2:15 PM Hearing in Conference Room 325 on
SB 307, SD2, HD1 Relating to Recordings of Law Enforcement Activities

TESTIMONY

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

Chair Tarnas, Vice Chair Poepoe, and Committee Members:

The League of Women Voters of Hawaii supports SB 307, SD2, HD1. 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.



House Committee on Judiciary & Hawaiian Affairs
Honorable David A. Tarnas, Chair
Honorable Mahina Poepoe, Vice Chair

**RE: Testimony in Support of S.B. 307 S.D. 2 H.D. 1, Relating to Recordings
of Law Enforcement Activities**
Hearing: March 18, 2025 at 2:15 p.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 H.D. 1. 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 H.D. 1.





All Hawaii News * P.O. Box 612 * Hilo, HI 96721 * www.allhawaiinews.com

March 17, 2025

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

**From: Nancy Cook Lauer, publisher, All Hawaii News
www.allhawaiinews.com publisher@allhawaiinews.com 808.781.7945**

In SUPPORT of SB307 SD2 HD1 RELATING TO RECORDINGS OF LAW ENFORCEMENT ACTIVITIES

All Hawaii News, a state government and political news, commentary and aggregate blog covering Hawaii since 2008, supports SB307 SD2 HD1, establishing the right of a person to record law enforcement activities.

With the diminishing number of journalists in Hawaii, ordinary citizens and neighborhood watch groups are steadily becoming the eyes and ears of their communities.

Generally, the First Amendment protects the right to record a police officer in a public place so long as it does not interfere with the officer's duties and is not done secretly, according to Justia, a legal advocacy group dedicated to providing the community with open and free access to the law.

Police officers and other government security forces are public servants. Their salaries are paid by the public and they should be expected to answer to them. Otherwise, we could risk a police state of unfettered power.

This is a good-government bill that should be supported. I am grateful to the bill's introducers and to the committee for hearing this measure.

Mahalo nui for considering SB307 SD2 HD1



Committee on Judiciary & Hawaiian Affairs

Hearing Date/Time: Tuesday, March 18th, 2025 at 2:15pm

Place: Conference Room 325, 415 South Beretania Street

Re: Testimony of the ACLU of Hawai'i in SUPPORT of S.B. 307 SD2 HD1 Relating to Recordings of Law Enforcement Activities

Dear Chair Tarnas, Vice Chair Poepoe, and Committee Members:

The ACLU of Hawai'i SUPPORTS **S.B. 307 SD2 HD1**, 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 HD1 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 SD2 HD1 strengthens the right to record by providing a private right of action to protect citizens who face backlash.

S.B. 307 SD2 HD1 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 HD1.**

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.

SB-307-HD-1

Submitted on: 3/17/2025 12:26:41 PM

Testimony for JHA on 3/18/2025 2:15:00 PM

Submitted By	Organization	Testifier Position	Testify
John Burnett	Big Island Press Club	Support	Written Testimony Only

Comments:

Aloha Chair Tarnas, Vice Chair Poepoe and members of the House Committee on Judiciary and Hawaiian Affairs:

The Big Island Press Club strongly supports Senate Bill 307, SD2 HD1, relating to the recordings of law enforcement activities.

The First Amendment to the United States Constitution guarantees the public the right to free speech as well as freedom of the press, which serves as a watchdog for the public. That includes the right to record the actions of law enforcement via photographs, video, audio recordings, as long as those media functions are performed without interference with the performance by law enforcement officers of their duties -- including the recording of pursuit and apprehension of suspects, traffic enforcement, arrests, and use of force by officers, including the discharge of weapons, both lethal and non-lethal.

The electronic and technological boom of the past few decades has provided the average citizen with recording tools, now commonplace, that were in the past almost exclusively the province of the media and entertainment industries. The recording of law enforcement activities, especially in public, is now something done routinely by average residents not employed by a media outlet, under a wide array of circumstances.

Police are public servants and are paid by the public. As such, their actions, under the color of law, are subject to the public scrutiny of public recordings guaranteed by the First Amendment, as well as the Ninth Amendment as a non-enumerated right retained by the people. While the press has traditionally acted as a public watchdog, members of the general public also have the right to be their own watchdogs, including the recording of the actions of law enforcement officers, as long as the recording doesn't interfere with officers performing their duties.

As an entity devoted to openness in government and the public's right to know since 1967, the Big Island Press Club urges passage of SB307 SD2 HD1 into law this legislative session.

Sincerely,

John Burnett

Past President and current Board Member, Big Island Press Club

SB-307-HD-1

Submitted on: 3/18/2025 2:21:08 PM

Testimony for JHA on 3/18/2025 2:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Nikos Leverenz	Drug Policy Forum of Hawaii	Support	Written Testimony Only

Comments:

Chair Tarnas, Vice Chair Poepoe, and JHA Committee:

I am writing in **strong support** of SB 307, SD 2, HD 1, which establishes a statutory right of a person to record law enforcement activities and a private cause of action for any violation of that right.

This measure is needed to clarify that law enforcement may not suppress the audio or visual recording of its activities. When an armed public official issues a verbal command to a member of the public, that command comes with the threat of force and can inhibit a community member's constitutionally protected role in monitoring law enforcement operations.

These recordings may be invaluable insofar as they provide an objective record that, unlike body cam recordings that are often subject to editing or nondisclosure, may be used by media, the courts, and others engaged in oversight of law enforcement operations.

Unfortunately, this state has yet to provide needed statutory guidance regarding the collection, retention, use, and disposal of electronic surveillance materials by law enforcement and other government actors.

With the nation embroiled in a period of tumultuous executive overreach, these recordings are increasingly vital to ensure that those wielding coercive state power operate with due regard for professional obligations and constitutional parameters.

Mahalo for the opportunity to provide testimony.

SB-307-HD-1

Submitted on: 3/15/2025 6:06:19 PM

Testimony for JHA on 3/18/2025 2:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Master Shelby "Pikachu" Billionaire	Ohana Unity Party & Kingdom of The Hawaiian Islands	Support	Remotely Via Zoom

Comments:

The Honorable Members of the Senate
Thirty-Third Legislature
State of Hawaii
415 South Beretania Street
Honolulu, HI 96813

Dear Senators,

I'm beyond excited to champion Senate Bill No. 307—a groundbreaking, electrifying win for transparency and accountability in Hawaii! This bill, enshrining the right to record law enforcement activities, is a beacon of empowerment for our 1.4 million residents, and I'm thrilled to see it soar. Packed with jaw-dropping stats, here's why SB 307 is an absolute must-pass triumph:

- **A Right Rooted in Reality:** Across the U.S., 91% of Americans own smartphones capable of recording (Pew Research, 2023)—in Hawaii, that's roughly 1.27 million potential watchdogs! Yet, 41% of U.S. citizens report witnessing police misconduct, with only 12% feeling safe to document it (Cato Institute, 2021). SB 307's clear right to record ensures our 2,936 state and county law enforcement officers (Hawaii DPS, 2023) are held accountable—hallelujah for transparency!
- **Curbing Interference:** Nationwide, 1 in 5 civilians filming police report harassment or device seizure (NPPA, 2022). In Hawaii, with 4,893 arrests in 2022 alone (Hawaii UCR), anecdotal accounts—like a 2021 Honolulu case of a confiscated phone during a protest—scream for SB 307's private right of action. Punitive damages and injunctive relief will stop these violations cold, protecting our keiki and kupuna alike!
- **Justice in Numbers:** Video evidence is a game-changer—87% of police misconduct cases with citizen footage lead to investigations, versus 33% without (ACLU, 2020). Hawaii's 2023 police misconduct complaints (est. 150, per HPD annual reports) could skyrocket in resolution with SB 307. Imagine: every one of our 1,200+ Honolulu PD officers (HPD, 2023) under the lens of justice—power to the people!
- **A National Trendsetter:** Twelve states have codified recording rights, with California's AB 748 cutting interference incidents by 28% since 2019 (CA DOJ, 2023). Hawaii, with

its \$1.2 billion public safety budget (DBEDT, 2024), can lead the Pacific! SB 307's three-year statute of limitations and attorney fee awards ensure our 14 circuit courts (Hawaii Judiciary, 2023) become arenas of equity—brilliant!

- Balancing Safety and Rights: With 710 violent crimes per 100,000 residents (FBI, 2022), Hawaii's officers need clarity—SB 307's carve-out against physical interference (Chapter 710) respects their 1,500+ annual use-of-force incidents (est., HPD data). This isn't anti-police—it's pro-truth, safeguarding our 68% trust in law enforcement (Gallup, 2023) while uplifting community power!

I'm buzzing with enthusiasm for Senate Bill No. 307—it's a dazzling leap toward a more just Hawaii! Pass this bill and let our 1.4 million voices amplify through every lens and microphone, holding our 2,936 officers to the highest standard. Mahalo for igniting this revolution—let's make Hawaii a shining star of accountability on September 1, 2025!

Sincerely,

Master Shelby "Pikachu" Billionaire, HRM

Ohana Unity Party, Chairman

www.Ohanaunityparty.com

Kingdom of The Hawaiian Islands, H.I.

SB-307-HD-1

Submitted on: 3/16/2025 11:51:45 AM

Testimony for JHA on 3/18/2025 2:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Kevin Faccenda	Individual	Support	Written Testimony Only

Comments:

I support this measure



Committee on Judiciary and Hawaiian Affairs
Chair David A. Tarnas, Vice Chair Mahini Poepoe

3/18/25 at 2:15 p.m. 325 via Videoconference
SB 307 SD2 HD1 Relating To Recordings Of Law Enforcement Activities

TESTIMONY

Stephen Munkelt, Legislative Committee, League of Women Voters of Hawaii

Chair Tarnas, Vice Chair Poepoe, and Committee Members:

The League of Women Voters of Hawaii supports BILL NUMBER SB 307 SD2 HD1

This bill makes clear that members of the public have a right to record the public actions of law enforcement, without fear of arrest, or of having devices and recordings seized. It also provides a civil remedy for persons whose efforts to record were prevented by the police.

The League of Women Voters believes that democratic government depends upon informed and active participation of our citizens at all levels of government. We give extraordinary powers to law enforcement, including the right to carry and use firearms. It is critical to have transparency about the actual use of those powers to foster public trust when they are used appropriately, and accountability when they are abused.

Although our courts have established that recording law enforcement is protected First Amendment activity, some officers in the field have, sadly, demonstrated that they are willing to act aggressively to keep their conduct from public view by arresting spectators, seizing cell phones, and other improper acts. The same officers have also demonstrated a habit of disabling their body worn cameras. As was the case with the murder of George Floyd it is the public which can provide some check and accountability, but not if police are allowed to violate First Amendment rights with impunity.

For these reasons the League of Women Voters of Hawaii **supports SB 307 SD2 HD1**

Thank you for the opportunity to submit testimony.

Stephen Munkelt
Legislative Committee

SB-307-HD-1

Submitted on: 3/17/2025 7:15:06 PM

Testimony for JHA on 3/18/2025 2:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Dara Carlin, M.A.	Individual	Support	Written Testimony Only

Comments:

Stand in Support

SB-307-HD-1

Submitted on: 3/17/2025 9:27:03 PM

Testimony for JHA on 3/18/2025 2:15:00 PM

Submitted By	Organization	Testifier Position	Testify
M. Leilani DeMello	Individual	Support	Written Testimony Only

Comments:

Aloha,

KĀKO‘O au i kēia pila! I SUPPORT this bill.

Mahalo,

M. Leilani DeMello

‘Ōla‘a, Puna, Hawai‘i