



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:

S.C.R. NO. 150/S.R. NO. 116, REQUESTING THE DEPARTMENT OF THE ATTORNEY GENERAL TO PROPOSE LEGISLATION THAT CRIMINALIZES ANY ACTS BY ELIGIBLE PUBLIC OFFICIALS, INCLUDING LOCAL LAW ENFORCEMENT THAT VIOLATE THEIR OATHS TO UPHOLD THE UNITED STATES CONSTITUTION AND HAWAII STATE CONSTITUTION.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Tuesday, March 23, 2021 **TIME:** 9:45 a.m.

LOCATION: State Capitol, Via Videoconference

TESTIFIER(S): Clare E. Connors, Attorney General, or
Lance Goto, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) submits these comments.

The purpose of these resolutions is to request the Department to propose legislation that would create law criminalizing acts by eligible public officials, including local law enforcement, that violate their oath to uphold the United States Constitution and Hawaii State Constitution. It is also requested that the proposed legislation include, as a penalty for conviction, the loss of any benefits to which the public official or local law enforcement may be entitled to receive as a result of their employment.

The Department is concerned that the request is vague, and the purpose or justification for the request is unclear. The resolutions do not identify a specific problem that needs to be addressed by prohibiting certain conduct through the creation of a new criminal offense. It is difficult to craft a criminal offense when it is not clear what conduct needs to be prohibited.

The resolutions do provide the following justification:

WHEREAS, neither the Hawaii State Constitution nor the Hawaii Revised Statutes provide specific penalties for an eligible public official's violation of their oath to defend the United States Constitution or Hawaii State Constitution; now, therefore;

But this justification does not identify specific conduct or acts of concern. It simply says that there are no specific penalties for public officials who violate their oath to defend the Constitution. It would appear, however, that the oaths are taken when the officials assume their positions, and are related to their employment. Therefore, it would seem that a violation of that oath would be grounds for termination or discharge, suspension, or similar employment action. If the conduct resulting in the violation of the oath also amounts to a violation of a criminal law, then the official should also be subject to criminal prosecution for that offense.

The Department appreciates this opportunity to share its concerns.

SR-116

Submitted on: 3/19/2021 4:33:02 PM

Testimony for JDC on 3/23/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Gerard Silva	Individual	Support	No

Comments:

Make it Happen.

SR-116

Submitted on: 3/19/2021 9:31:21 PM

Testimony for JDC on 3/23/2021 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
James R Mann	Individual	Support	No

Comments:

I strongly support this bill and believe it will provide direct accountability for those who's primary obligation is to the principles embodied in the Constitution of the United States and the State of Hawaii and helps to insure the placement of the rights of the citizens ahead of the politics of the times they are in.