

House Committee on Housing

Wednesday, February 04, 2009, 9:00 a.m. CR 325

TESTIMONY IN SUPPORT OF HB 359

Rep. Rida Cabanilla, Chair and Rep. Pono Chong Vice Chair and members of the HSG committee,

Thank you very much for the opportunity to testify in strong support for HB 359.

I am Ilalo Parayno, a retired educator and spend 40 in the DOE as a teacher and administrator.

This bill will help the state save its limited monetary resources by evicting those willfully damage public property, drug offenses, repeatedly over and over again.

Of course, police require probably cause and a sound basis and a warrant to search or seize a home for a criminal offense. However, that is not the case to be addressed here.

There is much welfare fraud by single women or men who claim a single parent family to obtain extra benefits and evade welfare and public housing laws.

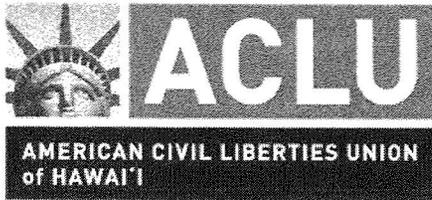
Single parent family often claim to be single, divorce their spouse and then live or cohabitate. The unannounced inspections are meant to enforce this type of welfare fraud offenses.

If you announce that inspection, they will remove all evident of illegal cohabitants before the inspection. Defeating its purpose.

Criminal investigation must hold to a different standard and are not covered here.

Thank you for the opportunity to testify.

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LATE TESTIMONY

BY EMAIL: HSGtestimony@capitol.hawaii.gov

Committee: Committee on Housing
Hearing Date/Time: Wednesday, February 4, 2009, 9:00 a.m.
Place: Room 325
Re: Testimony of the ACLU of Hawaii in Opposition to H.B. 359, Relating to Public Housing

Dear Chair Cabanilla and Members of the Committee on Housing:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in opposition to H.B. 359, which seeks to require mandatory reporting for criminal property damage, drug dealing or drug use and terroristic threatening and requires housing authority to evict tenants who violate rules.

Besides being bad public policy, this bill also seeks to violate the privacy rights of Hawaii's citizens by allowing unannounced searches of public housing tenants' homes. This provision of the bill is certain to invite legal challenges under the Hawaii Constitution, which explicitly protects every individual's fundamental right to privacy.

Art. I, §6, of the Hawaii Constitution, as adopted by the 1978 Constitutional Convention and as ratified by the electorate, secures personal privacy as a fundamental right of the highest order. Specifically, the provision states:

The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right.

Art. I, §6, Haw. Const. The Supreme Court of Hawaii has held that the Hawaii Constitution must be construed with due regard to the intent of the framers and the people adopting it. *State v. Kam*, 69 Haw. 483, 492, 748 P.2d 372, 377 (1988) (citing *State v. Lester*, 64 Haw. 659, 649 P.2d 346 (1982)). The fundamental principle in interpreting a constitutional provision is to give effect to that intent. *Id.* (citing *Huihui v. Shimoda*, 64 Haw. 527, 644 P.2d 968 (1982); *State v. Kahlbaum*, 64 Haw. 197, 638 P.2d 309 (1981); *State v. Miyasaki*, 62 Haw. 269, 614 P.2d 915 (1980)). In discussing the framers' intent in adopting Art. I, §6 of the Hawaii Constitution, the Supreme Court of Hawaii has noted:

American Civil Liberties Union of Hawaii
P.O. Box 3410
Honolulu, Hawaii 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org

Hon. Rep. Kanoho, Chair, WLO Committee
and Members Thereof
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The proposal to expressly acknowledge the ‘right of the people to privacy’ was offered by the Committee on Bill of Rights, Suffrage and Election of the Constitutional Convention of Hawaii of 1978. After reviewing the privacy provision in the Hawaii counterpart of the Fourth Amendment, the committee reported ‘it would be appropriate to retain [this] privacy provision ... but limit its application to criminal cases, and create a new section as it relates to privacy in the informational and personal autonomy sense.’

Nakano v. Matayoshi, 68 Haw. 140, 147, 706 P.2d 814, 818 (1985) (citing Stand. Comm. Rep. No. 69, in Proceedings of the Constitutional Convention of Hawaii of 1978 (Proceedings), Vol. I, at 674) (emphasis added).

The plain language of the Constitution, as bolstered by the framers’ intent, makes clear that the right to privacy in Hawaii is — in and of itself — a fundamental right. The right of privacy “is so important in value to society that it can be infringed upon only by the showing of a compelling state interest. If the State is able to show a compelling state interest, the right of the group will prevail over the privacy rights or the right of the individual. However, in view of the important nature of this right, the State must use the least restrictive means should it desire to interfere with the right.” *State v. Kam*, 69 Haw. at 493, 748 P.2d at 378 (citing Stand. Comm. Rep. No. 69, in 1 Proceedings of the Constitutional Convention of Hawaii of 1978, Vol. I at 674-75).

Unlike the federal constitutional right of privacy, which is inferred from the Constitution, the right of privacy is specifically enumerated in the State constitution. Thus, it is the Hawaii Constitution itself that provides that the right to privacy shall be protected as fundamental. *See, e.g., State v. Mallen*, 86 Haw. 440, 510, 950 P.2d 178, 248 (1998) (Klein, J., concurring). Accordingly, “[a]ny infringement of the right to privacy must be subjected to the compelling state interest test.” *Id.* This analysis gives effect to the framer’s intent that “the Hawaii Constitution Article I, Section 6, afford[] much greater privacy rights than the federal right to privacy” *State v. Kam*, 69 Haw. at 491, 748 P.2d at 377.

This attempt to thwart Hawaii’s constitutional right to privacy and allow for unannounced, random searches of homes, contrary to our State values and without any compelling reason, must not be allowed to pass.

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The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple
Staff Attorney
ACLU of Hawaii

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www.acluhawaii.org